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THOMAS F. MCFARLAND

January 19, 2007

By UPS overnight mail
(Monday delivery)

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Finance Docket No. 34985, *Hanson Aggregates, Inc. and Hanson Aggregates WRP, Inc. -- Alternative Rail Service -- South Plains Switching Ltd. Co.*

Dear Mr. Williams:

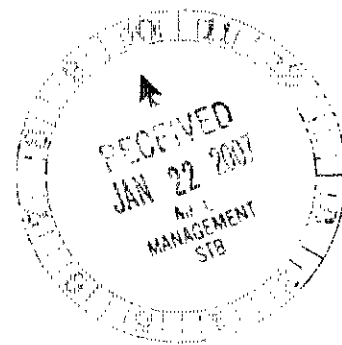
Enclosed please find an original and 10 copies of Motion To Dismiss Petition For Alternative Rail Service and Reply In Opposition If Petition Is Not Dismissed, for filing with the Board in the above referenced matter.

Very truly yours,

Tom McFarland

Thomas F. McFarland
*Attorney for South Plains
Switching, Ltd. Co.*

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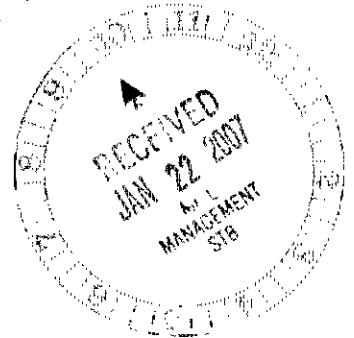


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BEFORE THE
SURFACE TRANSPORTATION BOARD

HANSON AGGREGATES, INC. AND)
HANSON AGGREGATES WRP, INC. --) FINANCE DOCKET
ALTERNATIVE RAIL SERVICE --) NO. 34985
SOUTH PLAINS SWITCHING LTD. CO.)



**MOTION TO DISMISS PETITION FOR
ALTERNATIVE RAIL SERVICE
and
REPLY IN OPPOSITION
IF PETITION IS NOT DISMISSED**

SOUTH PLAINS SWITCHING, LTD. CO.
P.O. Box 64299
Lubbock, TX 79464-4299

Movant-Replicant

ENTERED
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Part of
Public Record

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DATE FILED: January 22, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

HANSON AGGREGATES, INC. AND)	
HANSON AGGREGATES WRP, INC. --)	FINANCE DOCKET
ALTERNATIVE RAIL SERVICE --)	NO. 34985
SOUTH PLAINS SWITCHING LTD. CO.)	

**MOTION TO DISMISS PETITION FOR
ALTERNATIVE RAIL SERVICE
and
REPLY IN OPPOSITION
IF PETITION IS NOT DISMISSED**

Pursuant to 49 C.F.R. § 1117.1, SOUTH PLAINS SWITCHING, LTD. CO. (SAW) hereby moves that the Board dismiss the Petition for Alternative Rail Service (Petition) filed by Hanson Aggregates, Inc. and Hanson Aggregates WRP, Inc. (collectively "Hanson") on January 12, 2007 on the ground that the Board does not have jurisdiction over the subject matter of the Petition because rail transportation of aggregates has been exempted from regulation under Title 49 USC subchapter IV, including the alternative rail service provisions of 49 U.S.C. § 11123(a) (which also makes inapplicable the regulations implementing the latter statute, as published at 49 C.F.R. § 1146.1).

SAW is also submitting a reply in opposition to the Petition for consideration only in the event that the Motion to Dismiss is denied. The reply is submitted pursuant to 49 C.F.R. § 1146.1(b)(2).

The Petition appears at pages 14-16 of a single Hanson pleading that also includes Motions filed in other dockets. SAW is responding to the Petition within five business days, as

required by 49 C.F.R. § 1146.1(b)(2). SAW will reply separately to the Motions within the time frame provided for such replies in 49 C.F.R. § 1104.13(a).

I.

MOTION TO DISMISS

It is provided in 49 C.F.R. § 1039.11(a) that rail transportation of the commodities listed in that regulation “is exempt from the provisions of 49 USC subtitle IV.” Among the commodities so listed are “Gravel (aggregate or ballast), STCC No. 14 412, STCC Tariff 6001-T, eff. 1-1-92” and “Sand (aggregate or ballast), STCC No. 14 411, STCC Tariff 6001-T, eff. 1-1-92.” The cited regulation provides that the STCC numbers that identify the exempted commodities are those in effect on the effective date of the tariff cited, and “shall embrace all commodities assigned additional digits.” That listing clearly encompasses the aggregates identified in the Petition. Consequently, rail transportation of the commodities identified in the Petition is exempt from the provisions of 49 USC, subtitle IV.

The Petition seeks alternative rail service under 49 U.S.C. § 11123(a) and the regulations that implement that statute at 49 C.F.R. § 1146.1. The provisions of 49 USC, subtitle IV, from which rail transportation of the aggregates identified in the Petition is exempted, encompass 49 U.S.C. § 11123(a) and its implementing regulations at 49 C.F.R. § 1146.1. It follows that rail transportation of the aggregates identified in the Petition is exempt from 49 U.S.C. § 11123(a) and its implementing regulations at 49 C.F.R. § 1146.1.

Where, as here, rail transportation of a commodity has been exempted from the Board’s regulatory authority, the Board cannot entertain a petition that asks the Board to take action under a statutory provision from which rail transportation of that commodity has been exempted.

Pejepscot Industrial Park, Inc. -- Pet. for Declar. Order, 2003 STB LEXIS 253 at *12-13 (Finance Docket No. 33989, served May 15, 2003) (“... even if a carrier’s conduct would constitute a statutory violation during a period of regulation, the exemption bars regulatory relief during the period when the exemption is in force”); *Accord: Consolidated Rail Corp. -- Aband. Exempt. -- in Erie County, NY*, embracing *Buffalo Crushed Stone, Inc. v. R.J. Corman R. Co.*, 1998 STB LEXIS 777, slip opinion at 9 (Docket No. 42028, served Oct. 7, 1998); and *Consolidated Rail Corp. -- Declaratory Order -- Exempt*, 1 I.C.C.2d 895, 900 (1986), *aff’d sub nom. G&T Terminal Packaging Co. v. Consolidated Rail Corp.*, 830 F.2d 1230, 1235 (3rd Cir. 1987).

The exemption from regulation for rail transportation of aggregates thus precludes a finding that SAW’s transportation or failure to transport aggregates for Hanson warrants alternative rail service under 49 U.S.C. § 11123(a). That being the case, the Petition is required to be dismissed.

In *Expedited Relief for Service Inadequacies*, 3 S.T.B. 968 (1998), the Board stated that it will revoke exemptions to the extent necessary to provide relief shown to be justified under 49 C.F.R. § 1146 (at 976). That is too facile a solution for so complex a problem. The Board cannot simply revoke the commodity exemption for rail transportation of aggregates without a petition from Hanson to do so, and without a proceeding that would allow SAW and others to provide evidence and argument on the standard for revocation in 49 U.S.C. § 10502(d). In the absence of compliance with those procedural requirements, Hanson’s Petition is required to be dismissed.

II.

REPLY IN OPPOSITION TO PETITION

If the Petition is not dismissed for lack of subject matter jurisdiction, it should be denied for failure to prove existence of the prerequisites for alternative rail service specified in 49 U.S.C. § 11123(a) and 49 C.F.R. § 1146.1.

Pursuant to 49 U.S.C. § 11123(a), the Board can direct the handling, routing and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines for a period not to exceed 30 days if the Board determines the existence of either of two situations, i.e.:

- (1) that shortage of equipment, congestion of traffic, unauthorized cessation of operations, or other failure of traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States; or
- (2) that a rail carrier providing transportation subject to the Board's jurisdiction cannot transport the traffic offered to it in a manner that properly serves the public.

The provisions of 49 U.S.C. § 11123(a) are implemented in 49 C.F.R. §§ 1146.1(a) and (b)(1). The Board there requires a three-part showing in a Petition as prerequisites to a prescription of alternative rail service, i.e.,:

- (1) a demonstration that over an identified period of time, there has been a substantial, measurable deterioration or other demonstrated inadequacy in rail service provided by the incumbent carrier; and

- (2) a summary of the petitioner's discussions with the incumbent carrier of the service problems and the reasons why the incumbent carrier is unlikely to restore adequate rail service consistent with current transportation needs within a reasonable period of time; and
- (3) a commitment from another available railroad to provide alternative service that would meet current transportation needs, and an explanation of how the alternative service would be provided safely without degrading service to the existing customers of the alternative carrier and without unreasonably interfering with the incumbent's overall ability to provide service.

In *Expedited Relief for Service Inadequacies*, *supra*, the Board declined to delineate or define in the abstract what constitutes adequate service for all traffic under all circumstances at all times (3 STB at 975). With regard to the second standard above, the Board in that case said (at 977):

... Advance discussions between the parties are indispensable. They may help solve or ameliorate the service problems; narrow the issues in dispute; or, at a minimum, enable a more complete and informative record to be developed upon which we can assess the situation and the proposal for relief...

The portion of the third standard above relating to interference with the incumbent carrier's ability to provide service mirrors 49 U.S.C. § 11123(c)(2)(B), which provides as follows:

The Board may not take action under this section that would —

* * *

(2) impair substantially the ability of a rail carrier to serve its own customers adequately, or to fulfill its common carrier obligations.

Hanson's Petition is required to be denied because there is no legal or evidentiary basis for the Board to make any of the three findings that are essential for prescription of alternative rail service, let alone all three of those findings. The following analysis relies in large part on the facts in the verified statement of Mrs. Delilah Wisener, owner of SAW, which is attached to this Motion-Reply as Appendix 1, and which includes a sworn statement by Mr. Larry D. Wisener, sole owner of Choo Choo Properties, Inc. (Choo Choo).

1. There Is No Legal Or Evidentiary Basis For A Finding That SAW Has Provided Inadequate Rail Service To Hanson

A. There Is No Duty To Provide Rail Service To "Hanson Yard" Because There Is No Private Track At That Location

Track #382 is a stub-end track that lies west of Martin Luther King Drive in Lubbock, Texas. A Hanson predecessor leased that track from a SAW predecessor pursuant to a lease cancellable on 30 days' notice. Hanson and SAW became parties to that lease by assignment. From the time that SAW acquired its rail lines in Lubbock until early in 2006, the sole use of Track #382 was to deliver rail shipments of aggregates to Hanson. (Appendix 1, statement of Mr. Larry D. Wisener).

Hanson has stated that those rail shipments were delivered to "Hanson Yard," which it described as property that it owned or leased adjacent to Track #382 at which it stockpiled aggregates, and from which it transloaded and distributed aggregates. That Hanson statement is false. Hanson has never stockpiled aggregates on property adjacent to Track #382. The only activity that ever occurred on property adjacent to Track #382 was transloading of aggregates directly from railcars on Track #382 to trucks on property adjacent to Track #382. (Appendix 1 hereto at 1-3).

There is not now, and never has been, any rail trackage on property adjacent to Track #382. Instead, Hanson leased a portion of Track #382 from SAW for use as Hanson's private trackage from which it would perform transloading of aggregates from rail to truck. That is to say that Track #382 was used solely as Hanson's private trackage during the term of the lease.

In early Fall of 2005, Mr. Chuck Brewer of Hanson stated to Mr. Larry D. Wisener, then President of SAW, that upon completion of Hanson's contracts in early 2006, Hanson would leave the Lubbock market (statement of Mr. Larry D. Wisener at 2). Hanson ceased receiving rail shipments of aggregates on Track #382 in 2006. In a letter to the Board dated August 1, 2006, Mr. Michael H. Hyer, Vice President-General Counsel of Hanson, made the following statement. (Appendix 1, Attachment A at 2):

... (W)ith its past experience, Hanson has no interest in bidding jobs in this market (Lubbock) as long as SAW is the provider of the feeder rail service.

In light of Hanson's own statements by Messrs. Brewer and Hyer, SAW had every reason to believe that Hanson would no longer make use of a portion of Track #382 as Hanson's private trackage. Accordingly, on April 28, 2006, SAW sold Track #382 to Choo Choo Properties, Inc. (Choo Choo), subject to Hanson's lease, and on December 5, 2006, Choo Choo provided notice to Hanson of cancellation of that lease, effective 30 days thereafter. Attached to this Motion-Reply as Appendix 2 is a copy of a letter from counsel for SAW and Choo Choo to the Board, dated December 27, 2006, providing facts and argument in regard to that sale and lease cancellation by way of reply to an earlier Hanson request for relief dated December 21, 2006.

The upshot of the foregoing is that SAW has no duty to delivery shipments of aggregates to Hanson at "Hanson Yard" because Hanson does not have any private trackage at that location

to enable it to receive such shipments. Contrary to claims in the Petition, SAW does not have a legal duty to continue to make its trackage available to Hanson for use as Hanson's private track. The statutory scheme is that a shipper first constructs private tracks and then requests a rail carrier to provide a switch connection to the private tracks. *See* 49 U.S.C. § 11103. If Hanson is to receive rail shipments at "Hanson Yard," therefore, Hanson will be required to construct private trackage at that location, and then request a switch connection to SAW Track #382. PYCO was able to maintain a petition for alternative rail service because it had private trackage on which to originate and receive rail shipments. Hanson cannot maintain such an action in regard to "Hanson Yard" because it does not have private trackage at that location on which to receive shipments. Accordingly, Hanson's Petition is required to be denied.

B. SAW Did Not Fail To Provide Adequate Service To Hanson Because SAW Was Never Requested To Provide Rail Service To Hanson

SAW has not refused to provide rail service to Hanson in conjunction with Hanson's Duinink project because Hanson never requested SAW to provide rail service. A rail carrier does not unlawfully fail to provide service unless it refuses a reasonable request for service. *See* e.g., 49 U.S.C. § 11101(a). Here, Hanson did not make any such request.

Hanson contacted Mr. Larry D. Wisener to inquire about rail service. Mr. Wisener advised the Hanson representative that he (Mr. Wisener) no longer had control of SAW, and that Hanson should contact Mrs. Delilah Wisener to inquire about rail service by SAW. Inexplicably, Hanson did not contact Mrs. Wisener. (Appendix 1, verified statement of Delilah Wisener at 1-3).

It is not correct, as claimed by Hanson at page 15 of the Petition, that Hanson contacted SAW on December 6, 2006 to request rail service. Mr. Milacek of Hanson acknowledges that Hanson contacted Mr. Larry Wisener. (Petition Exhibit A, #5, page 3). Mr. Wisener advised Mr. Milacek to contact Delilah Wisener about rail service by SAW. Hanson did not do so.

When Larry Wisener advised Delilah Wisener of Hanson's inquiry, Mrs. Wisener investigated the availability of Track 9200 for use by Hanson. However, SAW did not have a legal duty to do so in the absence of a request by Hanson that SAW provide rail service. SAW investigated the availability of Track 9200 because that track traditionally had been used for rail-to-truck transloading of aggregates. Track 9200 was covered by the alternative rail service order in behalf of PYCO Industries, Inc. (PYCO), but was not being used by PYCO except for long-term railcar storage. SAW was unable to obtain an agreement for use of Track 9200 by Hanson.

In the absence of a request by Hanson that SAW provide rail service to "Hanson Yard," it cannot be rationally found that SAW refused to provide such service, and thereby failed to provide adequate rail service within the meaning of 49 U.S.C. § 11123(a) and 49 C.F.R. § 1146.1. Accordingly, Hanson's Petition is required to be denied.

2. Hanson Failed To Discuss Rail Service With SAW

As the Board said in *Expedited Relief for Service Inadequacies*, *supra*, "(a)dvance discussions between the parties are indispensable." (3 STB at 977). As made clear in the verified statement of Delilah Wisener, Hanson never discussed rail service with her or with any other representative of SAW, despite being urged by Larry Wisener to do so. The failure of the shipper to have engaged in such discussions was a principal ground for denial of the Petition for

Alternative Rail Service in *American Plant Food Corp. -- Alternative Rail Service -- Line of Texas Northeastern Railroad*, 1999 STB LEXIS 692 at *5 (Finance Docket No. 33795, served Dec. 7, 1999). Thus, Hanson's failure to have discussed rail service with SAW is an independent ground on which Hanson's Petition is required to be denied.

3. There Has Been No Showing That Alternative Rail Service Would Not Unreasonably Interfere With SAW's Ability To Serve Its Other Customers

As support for the third required finding, Hanson relies on the following statement by an attorney for the proposed alternative rail service carrier, West Texas & Lubbock Railway Co. (WTLC), at page 3 of a letter to the Board dated January 10, 2007 that is attached to the Petition as Exhibit C:

Because WTLC has worked carefully in the past to coordinate its operations on SAW trackage with those of SAW under protocols negotiated with SAW and imposed by the Board, WTLC's operations should not adversely affect those of the incumbent carrier (SAW).

That allegation of counsel falls far short of the showing of the nature and extent of service that WTLC would provide and what SAW rail lines that WTLC would use, which is a minimum requirement under this third element of the standards to be met before alternative rail service will be ordered. See *American Plant Food Corp. -- Alternative Rail Service -- Line of Texas Northeastern Railroad*, *supra*, where the Board said (at *5):

. . . As TNER points out, however, APF has not indicated the nature and extent of the service Kaimichi would provide, or what TNER lines would be used. Thus, we have no way of knowing whether the proposed Kaimichi operations would unreasonably interfere with TNER's operations on the Denison-to-Paris line.

This is yet another independent ground for denial of Hanson's Petition, especially in light of the statutory prohibition against Board action that would substantially impair SAW's ability to serve its other customers. 49 U.S.C. § 11123(c)(2)(B).

It is also sadly ironic that WTLC would make that allegation. The protocols that WTLC refers to from the *PYCO* case (1) take away over 50 percent of SAW's only rail yard for 20 out of 24 hours every day; and (2) entrust inbound switching of cars for SAW's customers to WTLC, who was a SAW opponent in that case. Those protocols were not "negotiated with SAW" as alleged by WTLC, but instead were forced upon SAW by a member of the Board's Staff over SAW's vigorous objection. Those protocols have repeatedly and substantially impaired SAW's ability to serve its customers in violation of 49 U.S.C. § 11123(c)(2)(B). One of the many such instances was recently described in a letter from Mrs. Delilah Wisener of SAW to Board Staff Member Melvin Clemens, dated December 26, 2006 (included as part of Appendix 2 hereto), as follows:

. . . In our conversation (on December 19, 2006), you stated that 'it was never the intent of the STB to impair or harm rail service to SAW's remaining customers,' but this was not evidenced by the Board's decision to make available to WTLC and PYCO over 50% of SAW Yard Storage Tracks and protocol operating hours of 20 out of 24 hours per day. Now for the second week in a row SAW has not had an interchange from WTLC on Thursday, Friday, Saturday, Sunday, or Monday. It appears that if PYCO does not need service, SAW does not get service. Where is the WTLC common carrier obligation?

Quite obviously, WTLC has not the slightest concern for SAW, or for SAW's other customers, and neither does the Board's Staff. That is not at all consistent with 49 U.S.C. § 11123(c)(2)(B).

CONCLUSION AND REQUESTED RELIEF

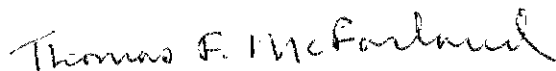
WHEREFORE, for the reasons stated, the Petition is required to be dismissed for lack of subject matter jurisdiction inasmuch as rail transportation of aggregates for Hanson is exempt from the provisions of 49 U.S.C. § 11123(a) and 49 C.F.R. § 1146.1, and there has been no petition, nor proceeding, nor legal or evidentiary support for findings under 49 U.S.C. § 10502(d) that would warrant revocation of that exemption.

In the event that the Petition is not dismissed for lack of jurisdiction, it should be denied on the merits on the ground that Hanson has failed to prove the existence of any of the prerequisites for an order of alternative rail transportation that are set out at 49 C.F.R. §§ 1146.1(a) and (b)(1).

Respectfully submitted,

SOUTH PLAINS SWITCHING, LTD. CO.
P.O. Box 64299
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Movant-Replicant



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DATE FILED: January 22, 2007

Hanson

South Plains Switching, Ltd. Co.
P. O. BOX 64299 **LUBBOCK, TEXAS 79464**
PHO: (806)828-4841 **FAX: (806)828-4863**

January 15, 2007

My name is Delilah Wisener and I am the sole owner of South Plains Switching, Ltd. Co. (SAW).

I strongly resent having to defend myself in this public forum against individuals representing a world wide company that have as of this date refused to speak to me personally. I am having to defend my day to day operations to them and this Board which seems to me to be in direct violation of the Constitution of the United States.

#1. In the "Background" portion of the Hanson Aggregates allegations, Hanson refers to the "Hanson Yard" adjoining the Hanson Track Lease. SAW owned the track that Hanson refers to as the Hanson Track Lease and is totally unaware of any "Hanson Yard" used for transloading, stockpiling, and distributing aggregates.

#2. "Hanson Statements" states that they filed on behalf of PYCO in the FLA and attached a copy of the filing...the filing states that Hanson owns property adjacent to the rail line...in this most recent filing Hanson says they have a "lease" adjacent to the rail line. Which time is correct, then or now? Since 1999, SAW has been unaware of any stockpiling, or distributing of aggregates other than directly from the rail car into a truck. Hanson also states they "believe" SAW's service to be inadequate. SAW believes the word "believe" should shield them from the penalties of perjury. Hanson states in their first filing that the "rumors that Hanson might support PYCO"...."threatened by SAW with spurious claims for back charges on shipments"...

In the first place, SAW heard no rumors. We only read the filings posted on the STB website. So if Hanson got any charges from SAW they were most likely demurrage charges which generally run about 6 months behind the incident. SAW did not charge Hanson demurrage unless SAW was charged demurrage by BNSF. I would think a world wide company would be aware of such charges as demurrage. However, as I said before, I have not talked to any Hanson representative.

#3. "Duininck Bid and Related Events." In Hanson's first filing they stated, "However, with its past experience, Hanson has no interest in bidding jobs in this market as long as SAW is the provider of the feeder rail service."

As the owner of SAW, was I supposed to somehow understand that Hanson would indeed be returning to the Lubbock Market? As I have repeatedly stated, I have not talked to a Hanson representative. I in no way felt that I would be harming Hanson by selling the track they now said they were not going to be using.

I further resent Hanson's attorney stating "Not by mere coincidence"...about the December 5, 2006 letter. I defy him to prove anything but coincidence! Then he states on "The following day, December 6, 2006, Hanson contacted Mr. Larry Wisener at SAW by telephone to advise SAW that the aggregates shipments..." Since Hanson has inserted himself into these proceedings, SAW would think that Hanson would have known that Mr. Wisener had resigned from SAW nearly a year ago and would not be the person to call. As an aside, Mr. Wisener was at SLAL and answered his cell phone and I personally heard him tell the caller that he should talk to Delilah Wisener. If Hanson had Mr. Wisener's card to get his cell phone number...they also had the office number of SAW but I never got a call or a message.

#4. "Hanson's December Filing". Hanson never once called me and asked if anything could be worked out although I was completely within my rights to cancel their lease and to sell the property as it occurred before any ruling by this Board. I was unaware that I must report to Hanson about anything I had done as I considered them gone. The provisions of the sale left me in control of the property until the end of the year.

#5. "SAW transfer to Choo Choo". Choo Choo Properties is a Texas Limited Liability Company. I enclose a copy of the filed quit claim deed. I was unaware that I should report to Hanson anything other than to cancel a lease they had purported to no longer be willing to use.

#6. "Choo Choo Cancellation Notice". Again the attorney for Hanson is taking liberties with the truth. I will give him the benefit of the doubt and suggest that what he "believes" to be the truth is not. Neither SAW nor Choo Choo has done one thing to evade ANY jurisdiction or legal obligations. To suggest that Mr. McFarland can only have one client is ridiculous!

#7. "Track 9200 Request". If my efforts to secure a place for Hanson to unload were futile, I can only say that Hanson has never called me to discuss their needs. Track 9200 has historically been used for aggregate unloading as it will hold a 60 car train with more than adequate roadway access. But Mr. Clemens of the STB knows that I did call him in an effort to regain some of my trackage taken for the "PYCO emergency" which now seems to be over. If Hanson wants WTLC to be their rail server, a simple change on the waybill from SAW to WTLC should accomplish that without harming SAW. But then again maybe that is the whole purpose here...to harm SAW! But the Board refuses to return any trackage to SAW for its operations although Mr. Clemens stated that it was not the Board's intention to harm SAW or its customers. WTLC is in control of a new yard built by the State of Texas with taxpayers dollars that is more than adequate for Hanson's operation and the storage of PYCO's surplus equipment.

#8. SAW had no reason to believe that Hanson would be using the track (from their own statements) and sold the track before this Board's ruling. SAW has little contact with the "powers" of most of the large companies it serves. We have contact with the "worker bees" and they had related that Hanson was through in Lubbock. However, they

did not say it was because of SAW. Counsel for Hanson states, "There simply is no other explanation for that deed..." Again, he is in error. There is another explanation for that deed and I will tell you what it is only if compelled to do so by my own Counsel.

#9. Mr. Wisener did not have the authority to speak for SAW on July 3, 2006, other than to tell what he knew to be a fact but anything he said did not sound like SAW did not want to serve Hanson. He was aware that under the sale agreement, SAW controlled the track until December 2006.

#10. Again, there is all this talk of the Hanson Yard. I've never seen the "Hanson Yard" yet it is supposed to be located adjacent to SAW tracks. Regardless of all the allegations against SAW made by Hanson, SAW has never refused to service Hanson Aggregates. Indeed, up to and until Hanson proclaimed to the world that they could no longer suffer the service of SAW did SAW do anything with the track formerly used by Hanson.

#11. Again, how was SAW to know that Hanson wanted to use that track?! Hanson's refusal to speak to the owner of SAW somehow justifies these outrageous accusations! SAW hardly thinks so.

#12. Again, Hanson refuses to talk to Delilah Wisener, how can they call it retaliation when SAW did not know Hanson was bidding on anything in Lubbock? SAW is quite small and would in no way even attempt to try to manipulate anything other than its own business.

#13. As referenced by Hanson the Asset Purchase Agreement says that track that does not hinder overall operations can be sold. In 2005, Hanson representative Mr. Brewer informed Mr. Wisener that upon completion of their current contracts (since the BNSF had cancelled their lease on the Pedernal facility) they would be leaving the Lubbock market because they could not compete with their Davis, OK facility because of the BNSF service from that facility. (See attached Hanson bid furnished to Duininck, second page) The bid has not been accepted. Hanson had not used the track in over 6 months and had declared to Mr. Wisener and the Board that they had no intentions of doing so.

#14. SAW does not interfere with the daily operations of other companies. It would be prudent for Hanson to contact SAW if they had plans to bid on projects in Lubbock County that may require the use of trackage formerly used by them, that they themselves should make initial contact before executing a contract. In reference to Track 9200, it would seem that Hanson is interfering with SAW's business by asking the Board not to return the track to SAW even though Hanson acknowledges they refuse to use that track but want the Board to withhold it from SAW for fear it might be used by their competition. At the very least it confirms what SAW has said all along...that track 9200 has historically been used for aggregate unloading. This conspiracy by the BNSF to use the shippers on SAW and this Board to remove SAW from Lubbock continues. I am wondering why Hanson has not gone to the BNSF for an unloading facility or at the least why they have not complained to the Board about BNSF service in Davis, Oklahoma?

#15. How can there be "a clear demonstration of "substantial, measurable deterioration or other demonstrated inadequacy in rail service"... when Hanson has not required or requested service for six (6) months?


The coincidence of the notice of cancellation and Duininck being awarded the highway project are unrelated.

As SAW stated earlier, if Hanson wants rail service from WTLC, SAW does not understand why Hanson does not ship to the WTLC at their yard in Lubbock?

In conclusion, Hanson makes 4 formal requests of this Board, all of which is prejudicial, discriminatory and constitutionally illegal because of prior rulings by this Board.

It is SAW's belief that by this Board's reluctance to make a decision on the FLA and/or to return its railroad intact because of the expiration of the statutes for alternative rail service, the Board is contributing to and allowing the harassment by anyone who wishes to make a filing to this Board against the SAW for conducting day to day business. Speaking of day to day business, SAW is ready, willing and able to service PYCO.

Pursuant to 28 USC 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing to my knowledge and belief is true and correct.



Delilah Wisener

Executed this 15th day of January, 2007.

ATTACHMENT
"A"

SENT BY: CHARLES H MONTANGE;

206 546 3739;

AUG-2-06 5:10PM;

PAGE 31/45

August 1, 2006

Attachment
"A"Hanson Building
Materials America, Inc.Michael H. Hyer
Vice President
& General Counsel8500 Freepoint Pkwy, Suite 138
Irving
TX 75069
Tel 469 417 1300
Fax 469 417 1457
michaelhyer@hansonamerica.comHonorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001Re: PYCO Industries, Inc. - Feed Line Application
South Plains Switching, F.D. 34890 and F.D. 34844

Dear Mr. Secretary:

Hanson Aggregates, Inc., a unit of Hanson PLC, a UK based construction materials company, is one of the largest producers of construction grade aggregates in the United States. Construction aggregates are most commonly used in the manufacture of concrete and asphalt and in the construction of roads and other improvements essential to our nation's infrastructure.

Hanson has shipped construction aggregates into the Lubbock, Texas market by rail using the services provided by South Plains Switching, Ltd. ("SAW"). We understand that PYCO Industries, Inc. has filed a feeder line application for all of the SAW system and, in the alternative, for less than the entire system (what has been labeled "Alternative Two"). We also understand that the Board determined to allow the application to go forward only on Alternative Two on the grounds that a majority of the shippers had not filed statements indicating that the existing SAW service was inadequate.

Hanson does not believe that the service by SAW is adequate or reliable. Hanson supports the PYCO application and requests that its application be granted for the entire system.

Hanson has had extensive experience with SAW and has not found the service to be adequate or in the public interest. For example, in 2005 Hanson entered into contractual commitments to supply construction aggregates from its Davis and Pedernal quarries to customers in Lubbock, Texas for use in certain highway construction projects. The terms of the contract provided for deliveries to be made by rail, the only practical means for shipment. Hanson owns property adjacent to a rail siding which Hanson uses to receive aggregates by rail and stockpile the aggregates for delivery to its customers. Deliveries under these contracts were made via that Hanson rail terminal in Lubbock. The ownership of a site near a rail siding to receive and stockpile aggregates is, of course, an important commercial asset to Hanson, as it allows Hanson to ship aggregates by rail to its customers in a convenient manner that some of Hanson's competitors are not able to offer.

SENT BY: CHARLES H MONTANDE;

208 548 9730;

AUG-2-06 5:11PM;

PAGE 32/45

*Attachment
"A"*

Without notice to or permission from Hanson, SAW unilaterally delivered aggregates from a competitor of Hanson to this site. When Hanson objected to this trespass, SAW threatened to cease service to Hanson. As Hanson and its contractor customer could incur significant delay damages if the highway project were delayed due to an interruption in rail shipments and there was no alternative to SAW, Hanson had little choice but to allow itself to be a victim of such SAW intimidation. In fact SAW continued to deliver aggregates produced by Hanson competitors to this site, notwithstanding Hanson's objections.

Moreover, with rumors that Hanson may formally support PYCO's application, Hanson was recently threatened by SAW with spurious claims for back charges on shipments made over an unknown timeframe. We believe these threats were made to discourage Hanson from responding to the Board in this proceeding.

Hanson does not now have any contracts requiring shipments of aggregates into the Lubbock market and rail deliveries is the only practical means of shipment for Hanson into this market. Hanson would like to bid jobs in the market and believes it would be in the public interest for Hanson to be a supplier to this market. However, with its past experience, Hanson has no interest in bidding jobs in this market as long as SAW is the provider of the feeder rail service.

Accordingly, we support PYCO's feeder line application for the entire system and urge its approval by the Board.

Pursuant to 28 USC 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing to my knowledge and belief is true and correct.

Yours very truly,



Michael G. Hyer
Vice President-General Counsel
Hanson Aggregates, Inc.

ATTACHMENT
"B"



After Filing Return to: CHOO CHOO PROPERTIES, INC, P. O. BOX 64420, LUBBOCK, TEXAS 79464-4420

DEED NO.: 53221

QUITCLAIM DEED

*Attachment
- "B"*
**THE STATE OF TEXAS §
COUNTY OF LUBBOCK §**

KNOW ALL MEN BY THESE PRESENTS:

THAT the SOUTH PLAINS SWITCHING LTD. CO., a Texas Limited Liability Company, of the County of Lubbock, State of Texas, (hereinafter "Grantor") for and in consideration of the sum of TEN DOLLARS AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, in hand paid by the grantee herein named, the receipt and sufficiency of which is hereby acknowledged, has **QUITCLAIMED**, and by the presents does **QUITCLAIM** unto **CHOO CHOO PROPERTIES, INC. of P. O. Box 64420, Lubbock, Texas 79464-4420** (hereinafter "Grantee"), all of its right, title and interest in and to the real property situated in Lubbock County, Texas, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter "the Property").

TO HAVE AND TO HOLD all of Grantor's right, title and interest in and to the Property and premises unto Grantee, its successors and assigns forever, so that neither Grantor nor its legal representatives or assigns shall have, claim or demand any right or title to the Property, premises or appurtenances or any part thereof.

This conveyance is made without warranty of any kind, express or implied and no covenant of warranty shall be implied from the use of any word or words herein contained, including without limitation any warranty that might arise by common law, or the warranties in Section 5.023 of the Texas Property Code (or its successor). By the acceptance of this deed,

COPY

Grantee takes the Property "AS IS". Grantor has not made and does not make any representations as to the physical condition, layout footage, expenses, zoning, operation, or any other matter affecting or related to the Property, and Grantee hereby expressly acknowledges that now such representations have been made. Grantor makes no other warranties, express or implied, of merchantability, marketability, fitness or suitability for a particular purpose or otherwise except as set forth and limited herein. Any implied warranties are expressly disclaimed and excluded.

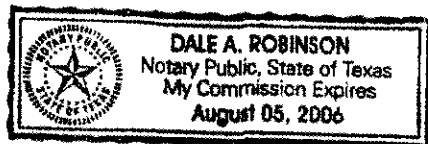
EXECUTED on this the 28th day of April, 2006.

South Plains Switching, Ltd., Co.

Delilah Wisener
By: Delilah Wisener, Owner

THE STATE OF TEXAS §
§
COUNTY OF LUBBOCK §

This instrument was acknowledged before me on this the 28th day of April, 2006 by DELILAH WISENER, Owner of South Plains Switching, Ltd. Co., a Texas Limited Liability Company, on behalf of said company.



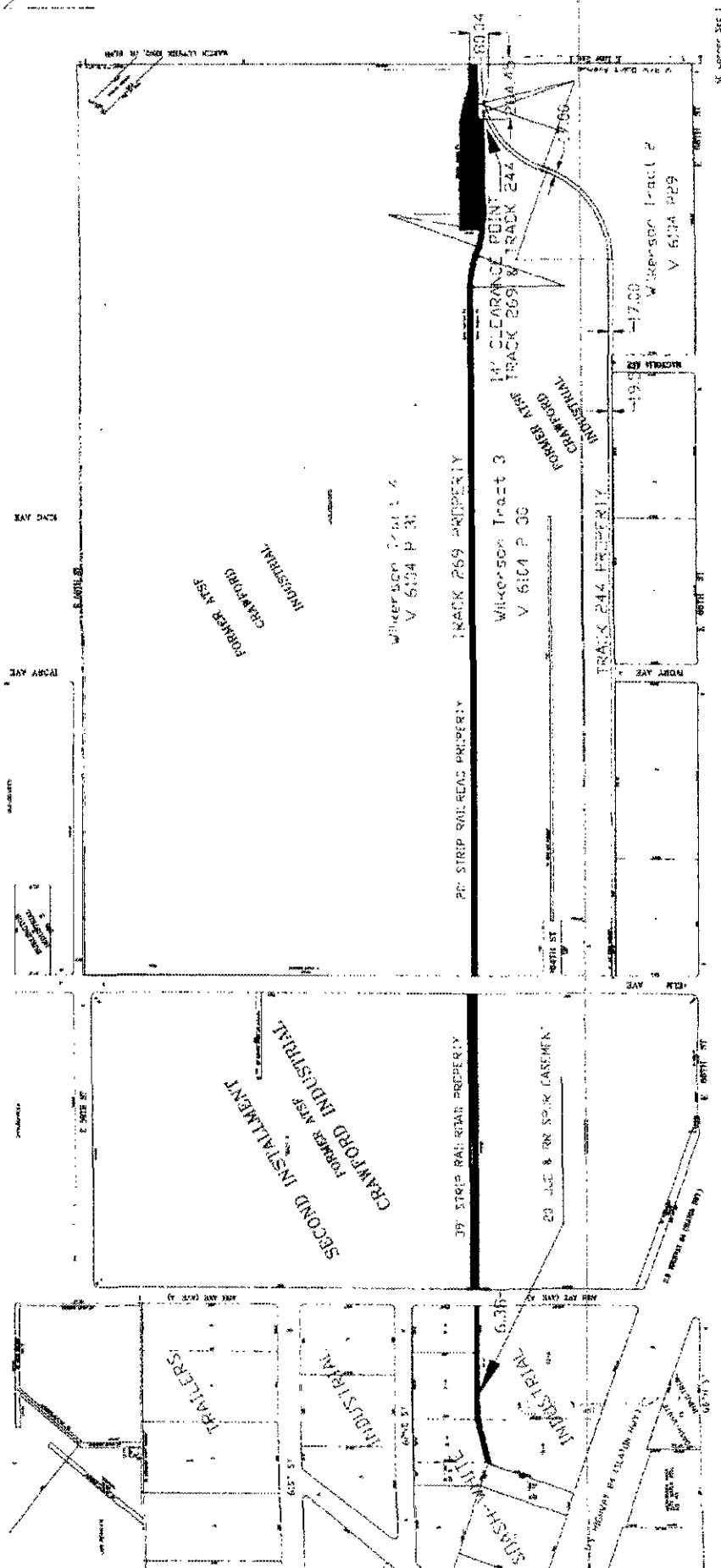
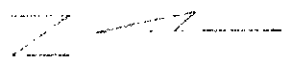
Dale A. Robinson
NOTARY PUBLIC, STATE OF TEXAS
Dale A. Robinson
Printed Name of Notary

My Commission Expires: August, 05, 2006

EXHIBIT "A".

All of that portion of the South Plains Switching, Ltd., Co. (SAW) interest in the property, tracks, easements, and fixtures located with or attached to SAW Lead Track ICC Track No. at 269 Beginning West of its fourteen foot (14') clearance point with ICC Track No. at 244 (Beginning 264.45' West of the intersection of a projection of the Southern Property Line adjacent to ICC Track No. 269 to its intersection with the East Line of Section 1) to the end of track ICC No. 269. Being bordered by 58th Street on the North, 64th Street and ICC Track No. at 244 on the South, Ash Drive on the West and the West Right Of Way Line of Martin Luther King, Jr., Boulevard on the East, all as presently located within Section 1, Block E, GC&SF RR Survey, City of Lubbock, Lubbock County, Texas.

Being the same Track Numbers 269, 268, 282, 283, and 270 described in Deed Dated May 18, 1999 recorded in the Lubbock County, Texas Deed Records in Volume 6814 at Page 162.



[X]hibit "A"

Drawing No. 53221

PARTIAL OF TRACK 269
PROPERTY CONVEYED TO ONE-0-00 PROPERTIES, INC
INCLUDING PERTIN ADJACENT TO TRACK 244

ATTACHMENT
"C"

Attachment
"C"
pg 1

QUOTATION

TO:	Subject
Ryan Duinick Duinick Bros	Texas Department of Transportation December, 2006 Letting

Date	Bid Date
December 5, 2006	December 5, 2006

Hanson Aggregates proposes to furnish the following described material(s), at the stated price, for use on the following project:

Project	Location	Project Start	Calendar Days
LUBBOCK US 84	LUBBOCK, TX	1Q07	135

Item I

Source Quarry	Rail Destination	Route
Davis, OK	LUBBOCK, TX	BNSF / SHORT LINE

Product Code	Product	Approximate Volume US Tons	FOB Hanson Aggregates' Lubbock Terminal US \$ / Ton
TX161	5/8" - #10, Class A	--	\$ [REDACTED]
TX164	1/2" - #10, Class A	--	\$ [REDACTED]
TX179	Screenings	--	\$ [REDACTED]

EXHIBIT A

Attachment
10
pg 2

Project	Location	Date	Page
LUBBOCK US 84	LUBBOCK, TX	December 5, 2006	2

*** Notes ***

1. Deliverability of product is solely based on BNSF Railway locomotive and crew availability. Hanson Aggregates' delivery obligations will be subject to the availability of rail transportation by the BNSF Railway. Hanson Aggregates will contact the BNSF Railway and in good faith make arrangements for the transportation by rail of the materials to Hanson Aggregate's Lubbock Terminal (Terminal) rail siding on customary terms and conditions. However, Hanson Aggregates does not warranty or in any way guarantee any delivery schedule or performance by the BNSF Railway or the availability of rail transportation. In the past deliveries of aggregates have been delayed or suspended by the railroad because of the unavailability of railcars, rail traffic congestion and other reasons. Hanson Aggregates will not be responsible for any losses suffered by Customer due to delays by, unavailability of service from or non-performance by the BNSF Railway.
2. Any rate increases and FSC changes demanded by BNSF Railway will be passed on to the contractor for the duration of this project.
3. The BNSF Railway has a fluctuating Fuel Surcharge (FSC) based on the Highway Diesel Fuel Index and changes every 30 days. The current FCS of 13% applies to December, 2006.
4. Delivery will occur in a minimum 60 privately owned 100 ton hoppers. Material will be unloaded directly into trucks. The unloading charge is included.
5. Receiving contractor is responsible for securing aggregate transportation with a delivery capacity of 500 TPH from the Terminal to the plant site. If the entire unit train is not unloaded within 24-hours of arrival at the Terminal the receiving contractor will be charged demurrage at \$ 75 per car for each subsequent 24-hour period.
6. Sales Agreement documents **MUST BE** in effect before shipment of material begins.
7. All prices subject to applicable sales tax unless exemption certificate provided.
8. Credit terms are Net 30 Days, pending Credit Approval.
9. Due to contractual agreements with the BNSF Railway, Hanson Aggregates has the right to refuse to load any non BNSF Railway ballast cars when BNSF Railway ballast cars are present for loading. Hanson Aggregates will not be responsible for any delays or costs that arise from its exercise of this right.
10. This quotation is also subject to Hanson Aggregates General Terms and Conditions, which are attached.

Hanson Aggregates appreciates the opportunity of quoting this project.

ACCEPTANCE:

Duininck Bros	Hanson Aggregates
By: _____	_____
Date: _____	Jason B. Milacek

Attachment
"C" pg 3

HANSON AGGREGATES GENERAL TERMS AND CONDITIONS

Buyer agrees that the following terms and conditions will apply to all sales of goods by Seller.

Governing Terms. The following general terms and conditions, together with the specific terms and conditions, not inconsistent herewith, in any Quotation, Acknowledgement of Order or other sales document issued by Seller or in a sales contract signed by Seller for a particular sale, are referred to collectively as the "Agreed Terms of Sale." Buyer agrees that the Agreed Terms of Sale shall govern the sale of the goods by Seller. Any conduct by Buyer which recognizes the existence of a contract with Seller for the sale of goods, including Buyer giving instructions to Seller respecting production or delivery or Buyer's acceptance of all or any portion of the goods, shall also constitute acceptance by Buyer of the Agreed Terms of Sale. Any terms in any purchase order or other document issued by Buyer which are in addition to or different from the Agreed Terms of Sale are objected to and rejected, and the Agreed Terms of Sale shall constitute the complete and exclusive statement of the terms and conditions of the agreement between the parties.

Prices. All severance, manufacturing, sales or use taxes now in effect or later imposed will be added to the invoices and paid by Buyer, except where otherwise provided by law. Sales tax will be charged unless a tax-exemption certificate is provided by Buyer. Prices set forth in any Quotation or Acknowledgement of Order are firm only through the expiration date stated in such document, but in no event more than 90 days from the date thereof. Prices for undelivered goods may be increased by Seller for any increase in the cost of Seller's supplies or labor or costs resulting from governmental action or other costs beyond Seller's reasonable control.

Payment and Collection. Unless otherwise provided in the Quotation or Acknowledgement of Order, all accounts are payable in current funds at the location designated in the invoice within 30 days of the date of delivery. Buyer agrees to pay interest at the maximum non-usurious rate on any past due indebtedness until paid and further agrees to pay all costs incurred in collection of past due indebtedness, including reasonable attorney's fees. Buyer acknowledges and agrees that, where Seller is not Hanson Aggregates, Inc., but any affiliate of Hanson Aggregates, Inc., Seller's right to payment of any account of Buyer has been or may be assigned to Hanson Aggregates Inc. and that by such assignment Hanson Aggregates, Inc. shall succeed to all Seller's rights to enforce payment, including any lien rights and rights to any bonds or other security of payment.

Credit Extension. Buyer represents and warrants that it is solvent and makes a continuing representation and warranty of solvency at the time of each tender of delivery. If at any time the financial condition of Buyer becomes unsatisfactory to Seller, Seller may require payment in advance or other security or guarantees satisfactory to Seller and may suspend deliveries until such adequate assurance of Buyer's performance has been received.

Delivery. Unless otherwise provided in the Quotation or Order Acknowledgement, all sales are F.O.B. the Seller's plant site stated in the Quotation or Order Acknowledgement and delivery shall occur and risk of loss shall transfer as the goods are loaded into trucks, railcars or other mode of transportation at such plant site.

Limited Warranty and Remedies. Seller warrants that, at the time of delivery, the goods sold will conform to the applicable specifications set forth in the Quotation, Acknowledgement of Order, or other sales document signed by Seller. **SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND ALL OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED.** If the goods fail to conform, at time of delivery, to this limited warranty, Buyer's sole and exclusive remedy and Seller's entire liability will be, at Seller's election, (i) the repair or replacement by Seller within a reasonable time of the non-conforming goods, f.o.b. Seller's plant with full freight allowed to the jobsite, or (ii) the refund of the price paid for the non-conforming goods, and in either case only if Seller receives written notice of the defect or non-conformance within 30 days of the date of delivery of the non-conforming goods. **SELLER WILL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.** Seller's liability, whether under contract, in tort or otherwise shall not in any event exceed the price of the goods or portion of such goods on which such liability is based, and Buyer waives any claim for amounts in excess of that amount.

Force Majeure. Seller will not be liable for failure or delays in delivery of goods due to fire, flood, inclement weather, labor disputes, accidents, equipment failure, delays or unavailability of rail, truck or other transport, governmental acts or regulation, acts of God or any other contingencies beyond Seller's reasonable control. In such event, Seller reserves the right to allocate its available inventories and production capacity among Seller's various customers.

Legal Actions. No legal action shall be brought by the Buyer against the Seller for any claim with respect to any goods sold by Seller to Buyer more than one year after delivery of such goods to the Buyer. It is agreed that any cause of action with respect to such goods will accrue on the date of delivery of such goods. The laws of the state where delivery occurs will govern this agreement and all matters arising therefrom.

Counterparts. A counterpart of this document delivered by facsimile transmission shall be deemed an original document and be valid for all purposes. If Seller stores this document electronically (including a "scanned" electronic copy), a reproduction of the scanned document shall be considered to be an original counterpart and shall be enforceable.

CHOO CHOO PROPERTIES LLC

Larry D. Wisener, Owner

**P. O. Box 64420
Pho: 806 863-3434**

**Lubbock, Texas 79464
Fax: 806 863-3202**

January 16, 2007

My name is Larry Wisener. I am the sole owner of Choo Choo Properties, LLC, a legally incorporated company in the state of Texas. Choo Choo Properties, LLC has the constitutional right to buy and sell Real Estate, Property Leases and buying and selling or leasing of equipment.

I am the former President of South Plains Switching, Ltd. Co. (SAW) from 1999 until my resignation in February 2006.

While serving in my capacity as President and General Manager of SAW I have direct knowledge of all allegations brought against SAW and Mrs. Wisener by PYCO Industries, Inc. (PYCO) and other shippers including Hanson Aggregates (Hanson).

It is my opinion that this Board and its "Office of Compliance" has a double standard for enforcing the statutes. It has allowed itself to be used by the BNSF Railway (BNSF) and PYCO in their conspiracy attempt to remove SAW from Lubbock. And has allowed BNSF to prevent SLAL from conducting business at its location in Colorado by not requiring BNSF to interchange cars to SLAL which has an interchange agreement in place. BNSF is currently serving other customers via the same interchange track. The Colorado Company is not a railroad; but rather a railcar storage company.

Mrs. Wisener, has had several telephone conversations with Mr. Mel Clemens of the "Office of Compliance" concerning this matter as well as discussing the return of Track 9200 in Lubbock for SAW use. Mr. Clemens' latest response to Mrs. Wisener stated that he had contacted BNSF and they assured him that their actions were not discriminatory or personal but rather for their own protection. Mr. Clemens indicated that being the case, there was nothing else he could do, as this was solely a BNSF decision.

The Board, by its rulings has taken over 40% of SAW's Yard and storage tracks for PYCO to use. PYCO has shown and proved its "financial strength" to this Board, yet it cannot store its own lease cars on its own property which is over 120 acres.

Yard tracks were taken from SAW because of claims made by PYCO of a "great emergency" and that "the sky would fall" if they were not in control of SAW's railroad. Their "great emergency" must be over as PYCO is shipping only 3 to 4 cars daily. Therefore, they have no need for the SAW infrastructure except to store their cars at no cost. Meanwhile, SAW has lost its ability to continue to store cars short term for several customers in the off season, thereby losing additional income.

SAW has had to release several employees because of this Board's action.

Hanson Aggregates' filing before this Board and their request is a direct attack against Choo Choo Properties, LLC and Larry Wisener personally. Choo Choo Properties, LLC has instructed its local legal counsel to prepare legal action against Hanson for its interference in Choo Choo's business, so that all Hanson Representatives may be deposed and the truth be made a part of the record.

Hanson representative, Chuck Brewer, notified me personally in early Fall of 2005 that Hanson had "let-go" Savage Industries, (a sub-contractor, performing the unloading of railcars on track 382 for Hanson) and that upon the completion of their current contracts in early 2006, Hanson would be leaving the Lubbock Market because of the loss of the Pedernal, New Mexico facility and because of the BNSF service at its Davis, Oklahoma quarry into Lubbock. Mr. Brewer also stated that Hanson would like to sell SAW the unloading device located in SAW's track because of the cost involved to remove and restore the track to its original condition as provided for in the "Short Term Lease Agreement".

I stated that SAW was indeed interested and for Hanson to decide on a sales price. Mr. Brewer also inquired if SAW would be willing to purchase a track-mobile and lease it back to Hanson to facilitate the unloading of their rail cars now that Savage Industries were no longer utilized.

SAW made this purchase to accommodate Hanson and its operation.

This was not the first time Hanson had notified SAW that it was leaving SAW and old location on Track 382. I was contacted by Mr. Ron Finley, President of Hanson by phone on February 6, 2003 at 2:30 PM and he confirmed the rumor that Hanson as well as others would be leaving SAW and relocating to a new facility to be built by BNSF and leased to the TNW Railroad for operation. He further stated that this move was to be completed by July, 2003. In other words

BNSF planned to "take away" SAW business. SAW did not retaliate or cause Hanson's business to suffer.

I now believe the "new facility" was a threat to SAW by BNSF after BNSF filed a law suit against SAW for breach of the sales contract and SAW had prevailed in court.

This litigation has been going on for years. BNSF has lost to SAW in court and Appeals Court. There are cases pending in Appeals court and another court case starts on January 22, 2007 in Lubbock, Texas between BNSF and SAW. It is no surprise to me the action being taken by BNSF against SAW.

Under the sales contract provisions, SAW had every right to sell the real estate and the track lease agreement with Hanson Aggregates to Choo Choo Properties, LLC.

Choo Choo Properties, LLC has the right to buy and hold real estate (See Exhibit 1/ Recorded Deed). It is a very common practice that all railroads use to sell leases and underlying real estate for many reasons, relief of taxes, lower maintenance costs, etc. In fact, BNSF makes such sales all the time; an example is BNSF sales to Staubach.

Track #382 is a stub track lying West of Martin Luther King Boulevard and dead ends. Selling it in no way affects the "overall operation of the railroad" as required in the sales contract.

From the false accusations and charges being brought against SAW and Choo Choo Properties, it is very clear and evident that Hanson Attorney, Mr. Michael Hyer, has not read Contract #AT183228 Lease of Land and Trackage (Short Term) (see Exhibit 2) dated March 5, 1991 and Assignment and Assumption Agreement signed by his company (See Contract #183228A/ Exhibit 3) dated June 25, 1993. This should be required reading by him before he makes further false allegations. Page 4, paragraph 10 a. gives SAW the right to use track #382 for any purpose when needed. Page 7, paragraph 16 a. provides for a 30 day cancellation. Page 8, paragraph 18 states upon termination of lease that lessee shall surrender to lessor possession of property and remove all improvements within the 30 day cancellation. Hanson, by their assumption of this contract in June 1993 required them by "law" to comply with its terms and conditions.

This whole matter could have easily been resolved between Hanson and SAW if a Hanson representative had contacted Mrs. Wisener, the owner of SAW as I had advised them to do.

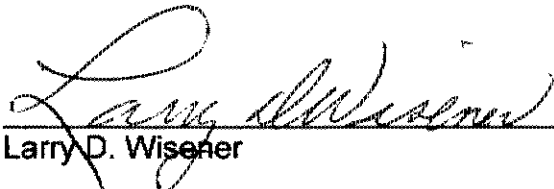
Mrs. Wisener and her few remaining employees would have tried their best to serve and accommodate Hanson, if not on track #382, then somewhere else on

SAW. Further, SAW has never and never will under Mrs. Wisener's supervision do anything to harm a shipper or prospective shipper on her railroad.

This Board's action in January 2006, of granting Alternative Rail Service, accepting the Feeder Line Application, and refusing to return the railroad to SAW at the end of the 270 days as provided for in the statutes, has destroyed a very successful shortline and a small family business. This is what BNSF stated to us they would do if SAW did not comply with their wishes.

The only appropriate action to be taken by this Board is to see that no more of SAW's constitutional rights are violated by false claims made by PYCO and Hanson and to make its decision on the Feeder Line Application so this unconscionable proceeding may end.

Pursuant to 28 USC 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing to my knowledge and belief is true and correct.


Larry D. Wisener

Executed this 16th day of January, 2007.

EXHIBIT
#1



After Filing Return to: CHOO CHOO PROPERTIES, INC, P. O. BOX 64420, LUBBOCK, TEXAS 79464-4420

DEED NO.: 53221

QUITCLAIM DEED

**THE STATE OF TEXAS §
§
COUNTY OF LUBBOCK §**

KNOW ALL MEN BY THESE PRESENTS:

THAT the SOUTH PLAINS SWITCHING LTD. CO., a Texas Limited Liability Company, of the County of Lubbock, State of Texas, (hereinafter "Grantor") for and in consideration of the sum of **TEN DOLLARS AND NO/100 DOLLARS (\$10.00)** and other good and valuable consideration, in hand paid by the grantee herein named, the receipt and sufficiency of which is hereby acknowledged, has **QUITCLAIMED**, and by the presents does **QUITCLAIM** unto **CHOO CHOO PROPERTIES, INC. of P. O. Box 64420, Lubbock, Texas 79464-4420** (hereinafter "Grantee"), all of its right, title and interest in and to the real property situated in Lubbock County, Texas, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter "the Property").

TO HAVE AND TO HOLD all of Grantor's right, title and interest in and to the Property and premises unto Grantee, its successors and assigns forever, so that neither Grantor nor its legal representatives or assigns shall have, claim or demand any right or title to the Property, premises or appurtenances or any part thereof.

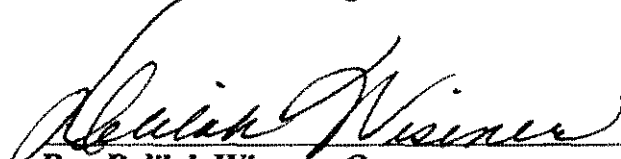
This conveyance is made without warranty of any kind, express or implied and no covenant of warranty shall be implied from the use of any word or words herein contained, including without limitation any warranty that might arise by common law, or the warranties in Section 5.023 of the Texas Property Code (or its successor). By the acceptance of this deed,

COPY

Grantee takes the Property "AS IS". Grantor has not made and does not make any representations as to the physical condition, layout footage, expenses, zoning, operation, or any other matter affecting or related to the Property, and Grantee hereby expressly acknowledges that now such representations have been made. Grantor makes no other warranties, express or implied, of merchantability, marketability, fitness or suitability for a particular purpose or otherwise except as set forth and limited herein. Any implied warranties are expressly disclaimed and excluded.

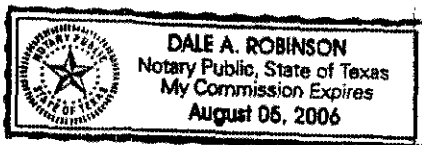
EXECUTED on this the 28th day of April, 2006.

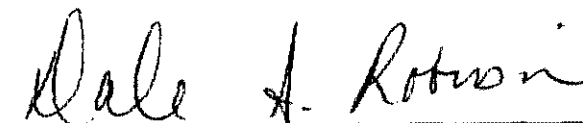

South Plains Switching, Ltd., Co.


By: Delilah Wisener, Owner

THE STATE OF TEXAS §
§
COUNTY OF LUBBOCK §

This instrument was acknowledged before me on this the 28th day of April, 2006 by DELILAH WISENER, Owner of South Plains Switching, Ltd. Co., a Texas Limited Liability Company, on behalf of said company.




NOTARY PUBLIC, STATE OF TEXAS

Printed Name of Notary

My Commission Expires: August, 05, 2006

COPY

EXHIBIT "A".

All of that portion of the South Plains Switching, Ltd., Co. (SAW) interest in the property, tracks, easements, and fixtures located with or attached to SAW Lead Track ICC Track No. at 269 Beginning West of its fourteen foot (14') clearance point with ICC Track No. at 244 (Beginning 264.45' West of the intersection of a projection of the Southern Property Line adjacent to ICC Track No. 269 to its intersection with the East Line of Section 1) to the end of track ICC No. 269. Being bordered by 58th Street on the North, 64th Street and ICC Track No. at 244 on the South, Ash Drive on the West and the West Right Of Way Line of Martin Luther King, Jr., Boulevard on the East, all as presently located within Section 1, Block E, GC&SF RR Survey, City of Lubbock, Lubbock County, Texas.

Being the same Track Numbers 269, 268, 282, 283, and 270 described in Deed Dated May 18, 1999 recorded in the Lubbock County, Texas Deed Records in Volume 6814 at Page 162.

South Plains Switching, Ltd. Co.
South Plains Lamesa Railroad, Ltd.
P. O. BOX 676 **SLATON, TEXAS 79364**
PHO: (806)828-4841 **FAX: (806)828-4863**

January 12, 2004

COPY


Mr. Bill Winters
VP/GM Northern Sales
Hanson Aggregates, Southwest Region
8505 Freeport Parkway N., Suite 600
Irving, Texas 75063

Dear Mr. Winters:

As per our telephone conversation of 01/12/04, South Plains Switching, Ltd. Co. (SAW) will suspend annual payments for lease of track # 382, Lease Agreement #183228 effective January 01, 2004.

The remainder of Lease Agreement # 183228 including the maintenance agreement will remain in affect. If the enclosed Agreement pertaining to demurrage relief meets with your approval, please sign, date and return it to me for my signature. I will send you a copy of the completed Agreement.

Sincerely,



Larry D. Wisener
President


South Plains Switching, Ltd. Co.
South Plains Lamesa Railroad, Ltd.
P. O. BOX 676 **SLATON, TEXAS 79364**
PHO: (806)828-4841 **FAX: (806)828-4863**

AGREEMENT

Effective January 01, 2004, South Plains Switching, Ltd. Co., (SAW) will afford Hanson Aggregates all of the per diem relief provided to SAW by Burlington Northern Santa Fe (BNSF) on rail cars going to track # 382.

Any accrued charges over 120 hours will be the responsibility of Hanson Aggregates.

This Agreement is to be held confidential.



Bill Winters
VP/GM Northern Sales
Hanson Aggregates
Southwest Region



Date



Larry D. Wisner
President
South Plains Switching, Ltd. Co.

EXHIBIT
#2

Contract No. A1183228

RETURN TO

Secretary, The A.T. & S.F. RY. CO. Topeka

Santa Fe Original

11024634

LEASE OF LAND AND TRackage
(Short Term)

THIS LEASE, made as of the 5th day of March, 1991, between THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter called "Lessor"), and WESTERN ROCK PRODUCTS, INC., a Delaware corporation (hereinafter, whether one party or more, called "Lessee").

WITNESSETH, That the parties hereto for the considerations hereinafter expressed covenant and agree as follows:

1. Lessor hereby leases to Lessee, subject to the rights and easements hereinafter excepted and reserved, and upon the terms and conditions hereinafter set forth, the land, together with those portions of tracks located thereon (hereinafter called "Premises"), situated at or near Lubbock, County of Lubbock, State of Texas, as described or shown on the sketch hereto attached, No. 16552, dated February 22, 1991, and made a part hereof, for a term beginning on March 6, 1991, and continuing on a month to month basis unless or until this Lease shall be terminated as hereinafter provided.
2. Lessor hereby excepts and reserves the right, to be exercised by Lessor and by any others who have obtained or may obtain permission or authority from Lessor so to do, (a) to operate, maintain, renew and relocate any and all existing pipe, power, and communication lines and appurtenances and other facilities of like character upon, over or under the surface of the Premises; and (b) from time to time to construct, operate, maintain, renew and relocate such additional facilities of the same character as will not unreasonably interfere with the use of the Premises by Lessee for the purpose specified in Section 4 hereof.
3. Lessee shall pay to Lessor for the use of the Premises the sum of Twelve Hundred and No/100 Dollars (\$1,200.00) per year. Said compensation shall be subject to revision at three (3) year intervals.
4. Lessee shall use the Premises exclusively as a site for transloading rock.

3114V

COPY

5. If ingress and egress to and from the Premises shall be required by use of Lessor's property adjacent to the Premises, such use is hereby granted, on a non-exclusive basis, by Lessor to Lessee. However, Lessor shall have the right, to be exercised at any time, to designate the location or route to be used for such purpose. For the purpose of this Lease, said ingress and egress route, whether specifically defined or not, shall be and is included under the definition of Premises.
6. (a) Lessee has examined the Premises and accepts the use and occupancy thereof with full knowledge of their condition, and shall observe and comply with any and all laws, ordinances or governmental regulations relating to the use and maintenance of the Premises.
- (b) Lessee covenants and warrants that Lessee either owns, or has obtained from the owner or owners thereof, the right to use any Improvements now on the Premises. Further, Lessee does hereby guarantee that upon termination of this Lease, for any reason whatsoever, Lessee will remove all of said improvements and/or personal property from the Premises and restore said Premises to a reasonably level and cleared condition, satisfactory to Lessor.
- (c) Lessee shall make no change or alteration in nor additions to Premises without first obtaining the written consent of Lessor.
- (d) Lessee shall pay any and all charges for water, gas, sewer, heat, light, power and telephone service and all other services supplied to or used on Premises or available, assessed or taxed to Premises. Lessee agrees that Lessor shall not be required to furnish to Lessee any water, gas, sewer, heat, light, power or telephone service or any other facilities, equipment, labor, materials or services of any kind whatsoever.
7. (a) Lessee shall pay, before the same become delinquent, all taxes, charges, rates, and assessments which may, during the term of this Lease, be levied upon, or assessed against, or be equitably chargeable to or assessed in respect of the Improvements; and where any such tax, rate, charge, or assessment may be embraced in the general amount of taxes charged upon the Premises separately or in connection with other property of Lessor, and Lessor shall pay all of said taxes, then Lessee shall promptly refund to Lessor the amount or part of the tax, charge, rate or assessment equitably or fairly apportionable to the Improvements.

- (b) In addition to the taxes specified above, Lessee shall pay to Lessor any privilege, sales, gross income or other tax (not including federal or state Income Tax) imposed upon the rentals received by Lessor by any agency having the authority so to do.
8. (a) Lessee agrees to keep the Premises and all Improvements thereon free from rubbish and in a neat and safe condition and satisfactory to Lessor. Lessee shall maintain, at Lessee's sole cost and expense, in good condition and repair, satisfactory to Lessor, all Improvements upon said Premises. The Premises and Improvements thereon shall not be used for displaying signs and notices other than those connected with the business of Lessee contemplated by this Lease. Such notices and signs shall be neat and properly maintained. Lessor shall have the right to enter the Premises at reasonable times to inspect the same.
- (b) Lessee shall not use or permit the use of the leased premises in any manner that will tend to create waste or a nuisance. In using the Premises, and in constructing, maintaining, operating and using the Improvements thereon, Lessee shall comply with any and all requirements imposed by federal or state statutes, or by ordinances, orders or regulations of any governmental body having jurisdiction thereover, including, but not limited to, building and zoning ordinances, restricting or regulating or prohibiting the occupancy, use or enjoyment of the Premises or regulating the character, dimensions or locations of any improvements on the Premises. Should any governmental body having jurisdiction in the matter require Lessor to dedicate, restrict or otherwise encumber any portion of the Premises, or any of its adjoining property, as a condition to approval of Lessee's use of the Premises, Lessor may, if said condition is unacceptable to Lessor, terminate this Lease. Lessee covenants to properly notify Lessor accordingly should any of the above occur.
9. (a) Lessee shall indemnify and hold harmless Lessor for any claim, loss, damage, expense or injury, including death, arising out of any act or omission of the Lessee, its employees or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other public body, individual, partnership, corporation, or other legal entity while on or about the Premises or while exercising any right or performing any obligation, pursuant to this Agreement, except to the extent that the claim, loss, damage, expense, death, or injury is due to the sole negligence of Lessor, its officers, agents, or employees.
- (b) Lessee shall indemnify and hold harmless Lessor from any liability or claimed liability arising under the Federal Employees Liability Act (F.E.L.A.) for any incident on or about the Premises regardless of negligence or alleged negligence of Lessor and regardless of any claim or allegation that Lessor was negligent in failing to provide its employees with a safe place to work.

10. (a) In further consideration of the rental to be paid by Lessee to Lessor herein contained, Lessor agrees that Lessee may during the life of this Lease receive service upon those portions of tracks located on the Premises, shown on the Exhibit "A" print attached hereto, it being understood and agreed that Lessor shall have the full right to use said tracks for other than the purposes of serving Lessee, provided such other use does not unreasonably interfere with use of the track for the purpose specified in Section 4.
- (b) Lessee shall at all times, and at its sole expense (or an equitable share in case other industries shall be served over the tracks), maintain, or cause to be maintained, those portions of tracks located on the Premises, in such safe and satisfactory condition as necessary to conform with Lessor's Standards and specifications, and to conform with all applicable Standards promulgated by the Federal Railway Administration, Occupational Safety and Health Administration or any successor agency or agencies, and all other governmental bodies having jurisdiction. Lessee shall indemnify and save harmless Lessor from and against any and all liability for losses and damages resulting from the failure of Lessee properly to maintain those portions of tracks located on the Premises, or failure to conform with Standards promulgated by governmental agencies respecting the condition and maintenance of those portions of tracks located on the Premises. If Lessor should determine that said tracks are unsafe, it may refuse to operate thereover until made safe by Lessee.
- (c) The title to those portions of tracks located on the Premises, and to all property furnished in the maintenance thereof, shall be in Lessor.
- (d) Lessee shall make no realignment, alteration or relocation of those tracks located on the Premises without first obtaining the written consent of Lessor.
11. (a) Lessee shall strictly comply with any and all statutes, ordinances, rules, orders and judgments of all governmental bodies having jurisdiction in the State in which the tracks under Lease are located, governing side clearances and overhead clearances from railroad tracks in that State.
- (b) In the event Lessee desires to install any gates across and adjacent to the tracks, or to install a track scale, unloading pit, loading or unloading device, adjustable loading docks or doors at warehouses, or any other structure which will impair the required clearances along the tracks, Lessee shall first secure any and all required authority from the State or other governmental body or agency having jurisdiction, prescribed by statute or Order of competent public authority, and shall furnish Lessor with a copy of such Order approving installation of the facility which will impair required clearances. Lessee shall submit to Lessor the plans and specifications for such facilities, and shall secure Lessor's written approval thereof before construction of such facilities is undertaken.

- (c) Lessee shall install, use and maintain all facilities described in subsection (b) of this Section 11, at its sole cost and expense, in such a manner and of such materials, satisfactory to Lessor, and as will not at any time be a source of danger to or interference with the safe operations by Lessor on the tracks and on its railroad. Gates across the tracks shall be opened whenever necessary to enable Lessor to operate over the tracks. Unloading pits shall be securely covered when not in actual use and at all times when the tracks are being switched. Doors shall be firmly secured, and adjustable loading docks at warehouses shall likewise be securely fastened in an upright position when not in actual use and at all times when the tracks are being switched. During installation and when using and repairing these facilities, Lessee shall exercise utmost and extraordinary diligence to prevent damage to property of Lessor or injury to its agents or employees.
- (d) Vertical and horizontal clearances from the tracks at entrances to buildings, and such clearances from the tracks for the facilities referred to in subsection (b) of this Section, shall conform with those specified in the Order authorizing such reduced clearances along the tracks.
- (e) Notwithstanding any provision of Section 9 of this Lease, Lessee shall indemnify and save harmless Lessor from any and all claims, loss, damage or expense for loss of or damage to property, including without limitation, the facilities described in subsection (b) of this Section 11, and injury to or death of persons, including without limitation, employees and agents of Lessor, arising out of the breach or alleged breach by Lessee of the obligations of this Section 11 or resulting in any manner from the construction, installation, maintenance, use, state of repair, presence or removal of such facilities along, under, across and adjacent to the tracks, regardless of whether such loss, damage, injury or death be caused or contributed to by the negligence or alleged negligence of Lessor, its agents, or employees, or otherwise. Lessee shall promptly upon receipt of bill pay to Lessor the full amount of any loss or damage that Lessor may sustain, incur or become liable for, and all sums which Lessor may pay or be compelled to pay in settlement of any claims on account thereof. Lessee shall also reimburse Santa Fe for any money which Santa Fe has paid as a result of a violation or alleged violation by Lessee of any statute, ordinance, rule, order or judgment referred to in this Section 11.
12. Lessee shall comply with all statutes, ordinances, rules, regulations, orders and decisions (hereinafter referred to as "Standards"), issued by any federal, state, or local governmental body or agency established thereby (hereinafter referred to as "Authority") relating to Lessee's use of the Premises. In its use of the Premises Lessee shall at all times be in full compliance with all Standards present or future set by any Authority, including but not limited to Standards concerning air quality, water quality, noise, hazardous substances and hazardous waste. In the event Lessee fails to be in full compliance with Standards set by any Authority, Santa Fe may after giving reasonable notice of the failure to

Lessee, and Lessee, within 30 days after such notice fails either to correct such noncompliance or to give written notice to Lessor of its intent to contest the allegation of noncompliance before the Authority establishing the Standard or in any other proper form, take whatever action is necessary to bring the Premises into compliance. Lessee shall reimburse the Lessor for all costs (including but not limited to consulting, engineering, clean up and disposal costs and legal costs) incurred by Lessor in complying with such Standards, and also such costs incurred by Lessor in abating a violation of such Standards, protecting against a threatened violation of such standards, defending any claim of violation of such standards in any proceeding before any Authority or court, and paying any fines or penalties imposed for such violations.

- (a) In case of a breach of the obligations contained in this Section 12 relating to "hazardous waste" and "hazardous substance", regardless of the negligence or alleged negligence of Lessor, Lessee agrees to assume liability for and to save and hold harmless Lessor from and against all claims for injuries to any person or damage to property including without limitation, employees and property of the Lessor and Lessee, and all related expenses including without limitation attorney's fees, investigator's fees, litigation expense, resulting in whole or in part from Lessee's failure to comply with any Standard issued by any governmental authority concerning "hazardous substances" and/or "hazardous waste". Lessee at its cost shall assume the defense of all claims, suits or actions brought for damages, and fines or penalties hereunder, regardless of whether they are asserted against Lessor or Lessee. Lessee also agrees to reimburse Lessor for all costs of any kind incurred as a result of Lessee's failure to comply with this Section 12, including but not limited to fines, penalties, clean up and disposal costs, and legal costs incurred as a result of Lessee's generating, handling, transporting, treating, storing for a period more than 30 days, or disposing of "hazardous waste" or "hazardous substances" on the Premises.
- (b) In case of a breach of Standards concerning air quality, water quality or noise, Lessee shall assume liability for and save and hold harmless the Lessor from any claim of a violation of such Standards regardless of the nature thereof or the Authority or person asserting such claim which results from the Lessee's use of the Premises, unless the claim results from the sole negligence of the Lessor. Lessee at its cost shall assume the defense of all such claims regardless of whether they are asserted against the Lessor or Lessee.

It is understood and agreed that a Lessee which does not now or in the future, generate, handle, transport, treat for more than 30 days, or dispose of "hazardous waste" or "hazardous substances" within the meaning of this Section 12 is not subject to the provisions of this Section 12 hereof. It is further understood that the Lessee is not responsible for clean up costs of any "hazardous waste" and/or "hazardous substances" or contamination resulting therefrom which occurred prior to Lessee's occupancy or use of the Premises.

13. It is the intention of the parties that Lessor's right to indemnity contained in Sections 9(b), 11(e) and 12(a) shall be valid and enforceable against Lessee regardless of negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Lessor, its officers, agents and employees.
14. Upon written notice from Santa Fe, Lessee agrees to assume the defense of any lawsuit, administrative action or other proceeding brought against Lessor by any public body, individual, partnership, corporation, or other legal entity, relating to any matter covered by this Agreement for which Lessee has an obligation to assume liability for and/or save and hold harmless Lessor. Lessee shall pay all the costs incident to such defense including, but not limited to, attorneys' fees, investigators' fees, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments. Any and all lawsuits or administrative actions brought or threatened on any theory of relief available at law, in equity or under the rules of any administrative agency shall be covered by this Section 14 including, but not limited to, the theories of intentional misconduct, negligence, breach of statute or ordinance, or upon any theory created by any statute or ordinance, state or federal.
15. If any rental hereunder shall be due and unpaid, or if default shall be made in any of the covenants or agreements of Lessee herein contained, or in case of any assignment or transfer of this Lease by operation of law, Lessor may, at its option, terminate this Lease by serving five (5) days' notice in writing upon Lessee; but any waiver by Lessor of any default or defaults shall not constitute a waiver of the right to terminate this Lease for any subsequent default or defaults.
16. (a) This Lease may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party, and upon expiration of the time specified in such notice, this Lease and all rights of Lessee hereunder shall absolutely cease and determine. However, upon any such termination, Lessor shall retain a minimum charge for use of the Premises a sum equal to three (3) months rental and any excess unearned portion of the annual rental paid in advance shall be refunded to Lessee.

(b) Lessee acknowledges that Lessor utilizes the rental collection system involving direct deposit of monies received through financial institution selected by Lessor, which precludes Lessor's ability to exercise rejection of a rental payment before Lessee's check is cashed. Lessee agrees that as a condition of Lessor granting this Lease, Lessee hereby waives any right it may have under law to force continuation of this Lease due to Lessor having accepted and cashed Lessee's rental remittance. Lessor shall have the option of rejecting Lessee's payment by refunding to Lessee the rental amount paid by Lessee, and enforcing the termination provisions contained herein.

17. Any notice to be given by Lessor to Lessee herein, and any notice to be given by Lessee to Lessor herein, shall be deemed to be properly served if it be deposited with the United States Postal Service, or its successor, or other universally acceptable mailing service, postage prepaid, addressed to the other party or parties hereto, at the addresses shown beneath signature of the respective parties hereto, or to such other address as the parties hereto may from time to time designate.
18. Upon the termination of this Lease in any manner herein provided, Lessee shall forthwith surrender to Lessor the possession of the Premises and shall remove the Improvements and all personal property, and restore the Premises to substantially the state in which they were prior to the construction of the Improvements, and in case Lessee shall fail within thirty (30) days' after the date of such termination to make such removal or restoration, then Lessor may, at its election to be exercised within one hundred twenty (120) days' thereafter, either remove the Improvements and all or any part of any personal property and restore the Premises for the account of Lessee, and in such event Lessee shall, within thirty (30) days' after the rendition of bill therefor, reimburse Lessor for the cost so incurred, or may take and hold the Improvements and all or any part of any personal property as its sole property.
19. If Lessee fails to surrender to Lessor the Premises, upon any termination of this Lease, all the liabilities and obligations of Lessee hereunder shall continue in effect until the Premises are surrendered; and no termination hereof shall release Lessee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or the date, if later, when the Improvements are removed and the Premises restored or Lessor elects to take and hold the Improvements as its sole property as referred to in previous Section.
20. In the event that Lessee consists of two or more parties, all the covenants and agreements of Lessee herein contained shall be the joint and several covenants and agreements of such parties.
21. Neither Lessee, nor the heirs, legal representatives, successors or assigns of Lessee, nor any subsequent assignee, shall underlease or sublet the Premises or the Improvements, or any part thereof, nor assign or transfer this lease or any interest herein, without the written consent and approval in each instance of Lessor.
22. All the covenants and agreements of Lessee herein contained shall be binding upon the heirs, legal representatives, successors and assigns of Lessee, and shall inure to the benefit of the successors and assigns of Lessor.



IN WITNESS WHEREOF, this Lease has been duly executed, in duplicate, by the parties hereto as of the day and year first above written.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

One Santa Fe Plaza
920 Southeast Quincy Street
Topeka, Kansas 66612

By 

Title Manager of Contracts

(Lessor)

WESTERN ROCK PRODUCTS, INC.

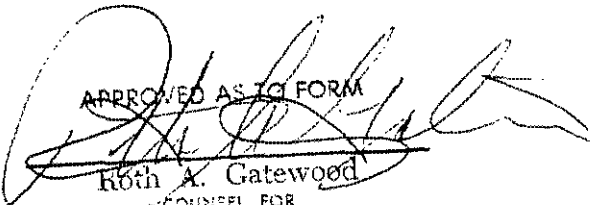
P. O. Box 27019
Albuquerque, New Mexico 87125

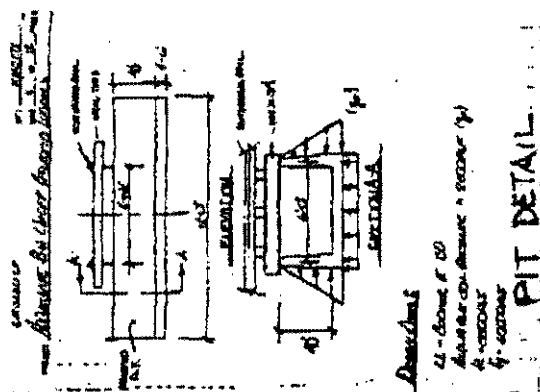
By 

Title Vice President

(Lessee)

APPROVED AS TO FORM


Keith A. Gatewood
COUNSEL FOR
AT & SF RY. CO.



STA. 83+09 E.E. PROP'D. LEASE

Q TRK # 269 A

STA 93109 WE PROD LEAG

31A 87450
MAY BE ADJUSTED
WESTWARD TO FIT
INSTANT

4 1/2 COM - UNLOADING PT

SKETCH
showing
PROP'D LEASE FOR
WESTERN ROCK
AT
WOBBOCK TEXAS

LUBBOCK SUB + CENTRAL REGION
FILE# 11015718 TRADING # 1655Z

February 22, 1991

DESCRIPTION:
PROPD. TEMPORARY TRK. # 269, LEASE FOR
THE UNLOADING OF AGGREGATE. THIS WILL
NECESSITATE THE PLACEMENT OF A CONCRETE
UNLOADING PIT.
TRK. # 269 ~ 1000' TRK. LEASE AND 20,000
SQ. FT. OF ASSOCIATED LAND. (20' X 1000')

COPY

EXHIBIT
#3

183228-A

**HANSON NATURAL
RESOURCES COMPANY**
1300 South Yale Street
Flagstaff, Arizona 86004
(602) 774-5253

**SANTA FE PACIFIC
GOLD CORPORATION**
6200 Uptown Boulevard Northeast
Albuquerque, New Mexico 87110
(505) 880-5300

July 16, 1993

Mr. Ray Spangler
Asst. Director, Asset Management
One Santa Fe Plaza
PO Box 1738
Topeka, Kansas 66601-1738

Re: Assignment of Lubbock, Texas Land Lease (the "Agreement")

Dear Mr. Spangler:

On January 25, 1993, Hanson Natural Resources Company and certain affiliates of Santa Fe Pacific Corporation, including the successor of Western Rock Products, Inc., Santa Fe Pacific Minerals Corporation, which has changed its name to Santa Fe Pacific Gold Corporation (collectively "Santa Fe") entered into a Asset Exchange Agreement to exchange the gold assets of Hanson for the coal and quarry assets of Santa Fe. Included in the coal and quarry assets of Santa Fe was the above-referenced Agreement.

This letter is to notify you that the Agreement has been assigned from Santa Fe to Hanson, effective June 25, 1993. Enclosed with this letter is an Assignment and Assumption executed by Santa Fe and Hanson. All future communications, correspondence or notices relative to the Agreement should be directed to Gifford-Hill & Company, a division of Hanson Natural Resources as follows:

Mr. Cody Miller, Vice President and Manager of Land and Exploration
Gifford-Hill & Company
2515 2525 McKinney Avenue, L.B.-30 10th Floor
Dallas, Texas 75201

On behalf of Santa Fe, it has been a pleasure working with you.

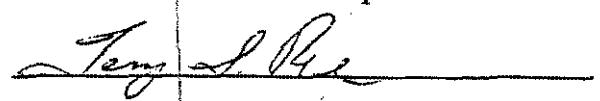
Sincerely,

Hanson Natural Resources Company


181114

Sincerely,

Santa Fe Pacific Gold Corporation



COPY

RECORDING REQUESTED BY
AND RETURN TO:
Brian O'Rourke
Keleher & McLeod
PO Drawer AA
Albuquerque, NM 87103

ASSIGNMENT AND ASSUMPTION

THIS ASSIGNMENT AND ASSUMPTION is made this 25th day of June, 1993 ("Effective Date") by and between Hanson Natural Resources Company ("HNRC"), whose address is 99 Wood Avenue South, Iselin, New Jersey 08830, and Santa Fe Pacific Minerals Corporation, successor-in-interest to Western Rock Products, Inc. ("SFPM"), whose address is 6200 Uptown Boulevard Northeast, Suite 400, Albuquerque, New Mexico 87110.

WHEREAS, SFPM has certain rights, interests, duties and obligations under the terms of that certain agreement (the "Agreement") more particularly described in Exhibit A hereto; and

WHEREAS, pursuant to the terms of the Asset Exchange Agreement, dated January 25, 1993 by and between HNRC and certain affiliates of Santa Fe Pacific Corporation, SFPM has agreed to convey, assign and transfer to HNRC all of its rights, title and interests in the Agreement as of the Effective Date;

NOW THEREFORE, the parties hereto agree as follows:

1. For value received, the receipt and sufficiency of which is acknowledged, SFPM hereby assigns, conveys and transfers to HNRC all of its rights, title and interests in the Agreement; except to the extent any of SFPM's right, title and interest is excepted from this Assignment, as set forth in Exhibit A hereto;

2. HNRC hereby agrees to, and accepts, the assignment of SFPM's rights, title and interests under the Agreement, and HNRC expressly assumes and agrees to keep, perform and fulfill all of SFPM's covenants, duties and obligations set forth in the Agreement that arise after the Effective Date;

3. This Assignment and Assumption is delivered pursuant to the Asset Exchange Agreement and shall be construed consistently therewith.

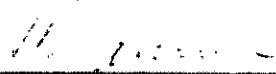
IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption as of the day and year first above written.

HANSON NATURAL RESOURCES COMPANY,
a Delaware general partnership


SANTA FE PACIFIC MINERALS
CORPORATION, a Delaware
corporation

By: GOLD FIELDS MINING CORPORATION,
a Delaware corporation,
general partner

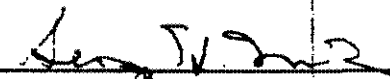
By: 
George H. MacLean
Vice President

By: 
P. M. James
Executive Vice President

By: CAVENHAM FOREST INDUSTRIES, INC.,
A Delaware corporation,
general partner

By: 
George H. MacLean
Vice President

By: CAVENHAM ENERGY RESOURCES, INC.,
a Delaware corporation,
general partner

By: 
George H. MacLean
Vice President

STATE OF NEW MEXICO
COUNTY OF BERNALILLO

This instrument was acknowledged before me on the 24
day of June, 1993, by George H. MacLean as Vice
President of Gold Fields Mining Corporation, a Delaware
corporation, one of the general partners of Hanson Natural
Resources Company, a Delaware partnership, on behalf of Hanson
Natural Resources Company.


Signature

Title: Notary Public

My commission expires: 9-11-94



OFFICIAL SEAL

Suzanne M. Bowersock

NOTARY PUBLIC - STATE OF NEW MEXICO
Notary Public Filed with Secretary of State
My Commission Expires 2

COPY

STATE OF NEW MEXICO
COUNTY OF BERNALILLO

This instrument was acknowledged before me on the 24
day of June, 1993, by George H. MacLean as Vice
President of Cavenham Forest Industries, Inc., a Delaware
corporation, one of the general partners of Hanson Natural
Resources Company, a Delaware partnership, on behalf of Hanson
Natural Resources Company.



OFFICIAL SEAL

Suzanne M. Bowersock

NOTARY PUBLIC - STATE OF NEW MEXICO

Notary Public Filed with Secretary of State

My Commission Expires

Signature

Title: Notary Public

My commission expires: 9-4-94

STATE OF NEW MEXICO
COUNTY OF BERNALILLO

This instrument was acknowledged before me on the 24
day of June, 1993, by George H. MacLean as Vice
President of Cavenham Energy Resources, Inc., a Delaware
corporation, one of the general partners of Hanson Natural
Resources Company, a Delaware partnership, on behalf of Hanson
Natural Resources Company.



OFFICIAL SEAL

Suzanne M. Bowersock

NOTARY PUBLIC - STATE OF NEW MEXICO

Notary Public Filed with Secretary of State

My Commission Expires

Signature

Title: Notary Public

My commission expires: 9-4-94

STATE OF NEW MEXICO
COUNTY OF BERNALILLO

This instrument was acknowledged before on the 24
day of June, 1993, by P. M. James as Executive Vice
President of Santa Fe Pacific Minerals Corporation, a Delaware
corporation, on behalf of said corporation.

Signature

Title: Notary Public

My commission expires: 9-4-94

155744



OFFICIAL SEAL

Suzanne M. Bowersock

NOTARY PUBLIC - STATE OF NEW MEXICO

Notary Public Filed with Secretary of State

My Commission Expires

COPY

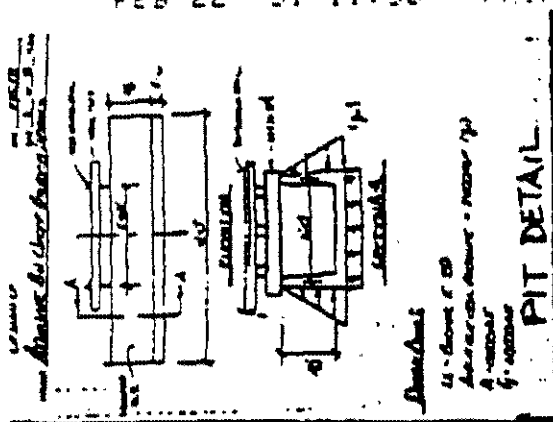
EXHIBIT A
TO ASSIGNMENT AND ASSUMPTION

A Lease of Land and Trackage, dated March 5, 1991 by and between the Atchison, Topeka and Santa Fe Railway Company, and Western Rock Products, Inc., predecessor-in-interest to Santa Fe Pacific Minerals Corporation, covering land west of Quirt Avenue, situated in or near Lubbock, County of Lubbock, State of Texas, as described more particularly on Sketch No. 16552, attached to the Agreement, such Sketch also being attached hereto and made a part hereof.

SUBJECT TO: Permitted Liens, as that term is defined in that certain Asset Exchange Agreement by and between Hanson Natural Resources Company and Santa Fe Pacific Minerals Corporation and other affiliated entities, dated the 25th day of January, 1993.

155744

COPY



STA. 83109 E-E PROP'D, LEASE

Q 1024 269

STA 93109 WE PRO'D LEASE

2 1/2" CONCRETE UNLOADING AT

STL 87-50
MAY BE ADJUSTED
WESTWARD TO FIT
TRANSMIT

672 94 75728

241917 HB:TRC-268

COURT AVE

SKETCH
SHOWING
PROPD. LEASE FOR
WESTERN ROCK
AT
WUBROCK, TEXAS
WUBROCK SUB. + CENTRAL REGION
FILE# 1015718 TRACING # 16552
February 22, 1991

Description:

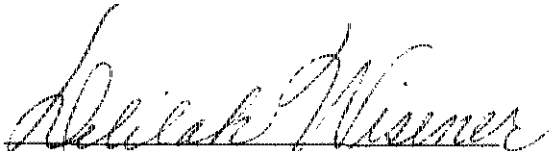
PROFD. TEMPORARY TRK. # 269, LEASE FOR THE UNLOADING OF AGGREGATE, THIS WILL NECESSITATE THE PLACEMENT OF A CONCRETE UNLOADING PIT.
TRK. # 269 ~ 1000' TRK. LEASE AND 20,000 SQ. FT. OF ASSOCIATED LAND. (20' X 1000')

UNCLASSIFIED COPY

VERIFICATION

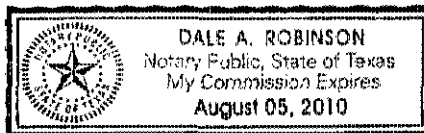
STATE OF TEXAS)
) SS:
COUNTY OF LUBBOCK)

DELILAH WISENER, being duly sworn on oath, deposes and states that she has read the foregoing statement, that she knows the contents thereof, and that the facts therein stated are true and correct.


DELILAH WISENER

SUBSCRIBED AND SWORN to
Before me this 17th day
of January, 2007.


Notary Public



My Commission Expires: August 05, 2010

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

December 27, 2006

By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

Re: PYCO Industries, Inc. - Feeder Line Application
South Plains Switching, F.D. 34890 et al.

Dear Mr. Williams:

This is the reply of South Plains Switching, Ltd. Co. (SAW) in opposition to the relief requested in a letter to you dated December 21, 2006 in behalf of Hanson Aggregates (Hanson). That letter was submitted by Michael H. Hyer, Esq., Vice President and General Counsel of Hanson North America. Presumably, Hanson Aggregates is an affiliate of Hanson North America.

The essence of the relief requested by Hanson is that the Board enforce Ordering Paragraph 4 of the Board's decision served August 3, 2006 in these proceedings. As here pertinent, the Board there prohibited SAW from rescinding any lease of any shipper who supports a feeder line application for acquisition of SAW's rail lines. Hanson supports a feeder line application filed by PYCO Industries, Inc. to acquire SAW's rail lines. Hanson requests that the Board declare that SAW's attempt to cancel Hanson's lease of a SAW track is null and void in violation of the prohibition in Ordering Paragraph 4 described above. Hanson requests that the Board order SAW to provide rail service to Hanson on that track. (Hanson letter dated Dec. 21, 2006 at 2).

Hanson's requests should be denied. SAW did not cancel Hanson's track lease. Hanson's track lease was cancelled by Choo Choo Properties, Inc. (Choo Choo) in accordance with the terms of that lease. By deed executed on April 28, 2006, copy of which is attached as Exhibit A, SAW conveyed the track at issue to Choo Choo, subject to Hanson's lease of that track. Thereafter, by letter dated December 5, 2006, Choo Choo cancelled that lease in

THOMAS F. MCFARLAND

Vernon A. Williams, Secretary

December 27, 2006

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accordance with Article 16(a). Attached to this reply as Exhibit B is a copy of that lease. It can be seen that Article 16(d) expressly authorizes cancellation of that lease on 30 days' notice.¹

It is recognized that the notice of cancellation of Hanson's lease of track was sent on SAW letterhead, and was signed by the owner of SAW. However, that notice was sent by SAW in behalf of Choo Choo, just as the letter to the Board dated December 21, 2006 was sent by Hanson North American in behalf of Hanson Aggregates. In order to remove all doubt as to the efficacy of the cancellation, Choo Choo is issuing another notice of cancellation to Hanson Aggregates, c/o Hanson North America, by means of a letter signed by Choo Choo's counsel dated December 28, 2006, a copy of which is attached to this reply as Exhibit D.

Cancellation of Hanson Aggregates' lease by Choo Choo did not violate Ordering Paragraph 4 of the Board's decision served August 3, 2006. That order was directed at SAW, not Choo Choo. Neither did Choo Choo's cancellation of Hanson Aggregates' lease violate any other order in that Board decision. Ordering Paragraph 3 of that decision prohibits SAW or Choo Choo, after May 5, 2006, from rescinding leases "concerning PYCO." The Hanson Aggregates lease cancelled by Choo Choo concerns Hanson Aggregates, not PYCO. Ordering Paragraph 2 of that decision provides that transfers of SAW's real property to Choo Choo after May 5, 2006 are void. The transfer of rail property leased by Hanson Aggregates occurred prior to May 5, 2006.

Absent a violation of the Board's order, a rail carrier can lawfully cancel a lease of its rail property, provided that such cancellation is in accordance with the terms of the lease. There is no contention in Hanson's letter that the lease at issue is not cancellable on 30 days' notice in accordance with its terms.

Inasmuch as Choo Choo's cancellation of Hanson Aggregates' lease did not violate any Board order, and was in accordance with the terms of the lease, the Board cannot lawfully declare that cancellation of the lease was null and void. Nor can the Board lawfully order SAW to provide rail service to Hanson Aggregates inasmuch as Hanson Aggregates will not have a private track on which to receive shipments at Lubbock as of the effective date of the lease cancellation.

The foregoing is a complete defense to the claims made in Hanson's letter. However, there are several additional misleading statements in Hanson's letter that should be addressed briefly. Hanson states that it "believes" that a customer is "prepared to" purchase aggregates from Hanson for delivery on the leased track. (Hanson letter dated Dec. 21, 2006 at 1). That is

¹ In January, 2004, the term of the lease was changed from annual to monthly, but the 30-day cancellation provision was retained. (See letter dated January 12, 2004 and follow-up Agreement signed in January, 2004, copies of which are attached as Exhibit C).

THOMAS E. McFARLAND

Vernon A. Williams, Secretary

December 27, 2006

Page 3

far short of the requisite proof that the leased track actually would be utilized for delivery of rail shipments except for the lease cancellation.

Hanson states that it "believes" that Mr. Larry Wisener controls and directs the operations of SAW. (Hanson letter dated Dec. 21, 2006 at 1). Hanson has not provided a shred of evidence to support that belief. The fact is that Mr. Wisener does not control nor direct SAW's operations. As a representative of Choo Choo, Mr. Wisener advised Hanson that SAW had sold the property at issue to Choo Choo, and that Choo Choo was cancelling Hanson's track lease so that Hanson would not be able to receive rail shipments on that track. In addition, Mr. Wisener advised Mr. Chuck Brewer of Hanson that Hanson should contact Mrs. Delilah Wisener, owner of SAW, to determine whether SAW would be able to provide an alternative track for Hanson's receipt of rail shipments. Mr. Wisener's actions in those respects were fully consistent with his absence of control and direction of SAW's operations.

In behalf of Choo Choo, Mr. Wisener made Mrs. Delilah Wisener, owner of SAW, aware of Hanson's request for delivery of rail shipments on the track as to which Hanson's lease is being cancelled. In behalf of SAW, Mrs. Wisener made a good faith effort to make arrangements for Hanson to use Track 9200 for those shipments. Attached to this reply as Exhibit E is a verified letter from Mrs. Wisener to Mr. Melvin Clemens of the Board's staff, dated December 26, 2006, referring to a telephone conversation between Mrs. Wisener and Mr. Clemens on December 19, 2006 in which Mrs. Wisener requested the Board's permission to use Track 9200 for that purpose. That request for permission was necessary because Track 9200 is covered by the Board's order for alternative rail service for PYCO Industries, Inc. As noted in Mrs. Wisener's letter, Track 9200 is currently being used solely for storage of empty tank cars in the absence of demand for rail service by PYCO.^{2/}

Lastly, it is interesting to note Hanson's extensive disclaimer regarding BNSF rail service in Note 1 on page 2 of the Quotation that was attached as Exhibit A to Hanson's letter. It is quite ironic that Hanson has complained to the Board about SAW's rail service when Hanson apparently has encountered enough difficulty with BNSF's rail service to cause it to include such extensive disclaimers in its bids.

^{2/} Inasmuch as Mrs. Wisener's letter to Mr. Clemens covers subject in addition to Hanson's requests, that letter is being sent under separate cover to Mr. Clemens without the verification page.

THOMAS F. MCFARLAND

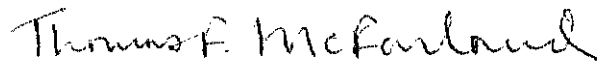
Mr. Vernon A. Williams

December 27, 2006

Page 4

WHEREFORE, for all of the reasons stated in this reply, the relief sought in Hanson's letter should be denied.

Respectfully,



Thomas F. McFarland

*Attorney for South Plains Switching, Ltd. Co. and
for Choo Choo Properties, Inc.*

TMCF:kl:enc:wp8.0\1169-A\lrstb6

cc: All parties of record, *by first-class U.S. mail*
Michael H. Hyer, Esq., *by UPS overnight mail*
Mr. Larry Wisener, *by e-mail*
Mrs. Delilah Wisener, *by e-mail*
Mr. Dennis Olmstead, *by e-mail*

EXHIBIT A

After Filing Return to: CHOO CHOO PROPERTIES, INC, P. O. BOX 64420, LUBBOCK, TEXAS 79464-4420

DEED NO.: 53221

QUITCLAIM DEED

THE STATE OF TEXAS §
§
COUNTY OF LUBBOCK §

KNOW ALL MEN BY THESE PRESENTS:

THAT the **SOUTH PLAINS SWITCHING LTD. CO.**, a Texas Limited Liability Company, of the County of Lubbock, State of Texas, (hereinafter "Grantor") for and in consideration of the sum of TEN DOLLARS AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, in hand paid by the grantee herein named, the receipt and sufficiency of which is hereby acknowledged, has **QUITCLAIMED**, and by the presents does **QUITCLAIM** unto **CHOO CHOO PROPERTIES, INC. of P. O. Box 64420, Lubbock, Texas 79464-4420** (hereinafter "Grantee"), all of its right, title and interest in and to the real property situated in Lubbock County, Texas, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter "the Property").

TO HAVE AND TO HOLD all of Grantor's right, title and interest in and to the Property and premises unto Grantee, its successors and assigns forever, so that neither Grantor nor its legal representatives or assigns shall have, claim or demand any right or title to the Property, premises or appurtenances or any part thereof.

This conveyance is made without warranty of any kind, express or implied and no covenant of warranty shall be implied from the use of any word or words herein contained, including without limitation any warranty that might arise by common law, or the warranties in Section 5.023 of the Texas Property Code (or its successor). By the acceptance of this deed,

COPY

Grantee takes the Property "AS IS". Grantor has not made and does not make any representations as to the physical condition, layout footage, expenses, zoning, operation, or any other matter affecting or related to the Property, and Grantee hereby expressly acknowledges that now such representations have been made. Grantor makes no other warranties, express or implied, of merchantability, marketability, fitness or suitability for a particular purpose or otherwise except as set forth and limited herein. Any implied warranties are expressly disclaimed and excluded.

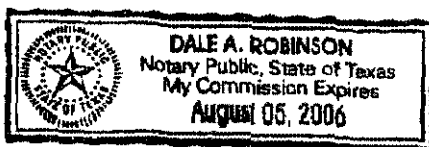
EXECUTED on this the 28th day of April, 2006.

South Plains Switching, Ltd., Co.

Delilah Wisener
By: Delilah Wisener, Owner

THE STATE OF TEXAS §
§
COUNTY OF LUBBOCK §

This instrument was acknowledged before me on this the 28th day of April, 2006 by DELILAH WISENER, Owner of South Plains Switching, Ltd. Co., a Texas Limited Liability Company, on behalf of said company.



Dale A. Robinson
NOTARY PUBLIC, STATE OF TEXAS
Dale A. Robinson
Printed Name of Notary

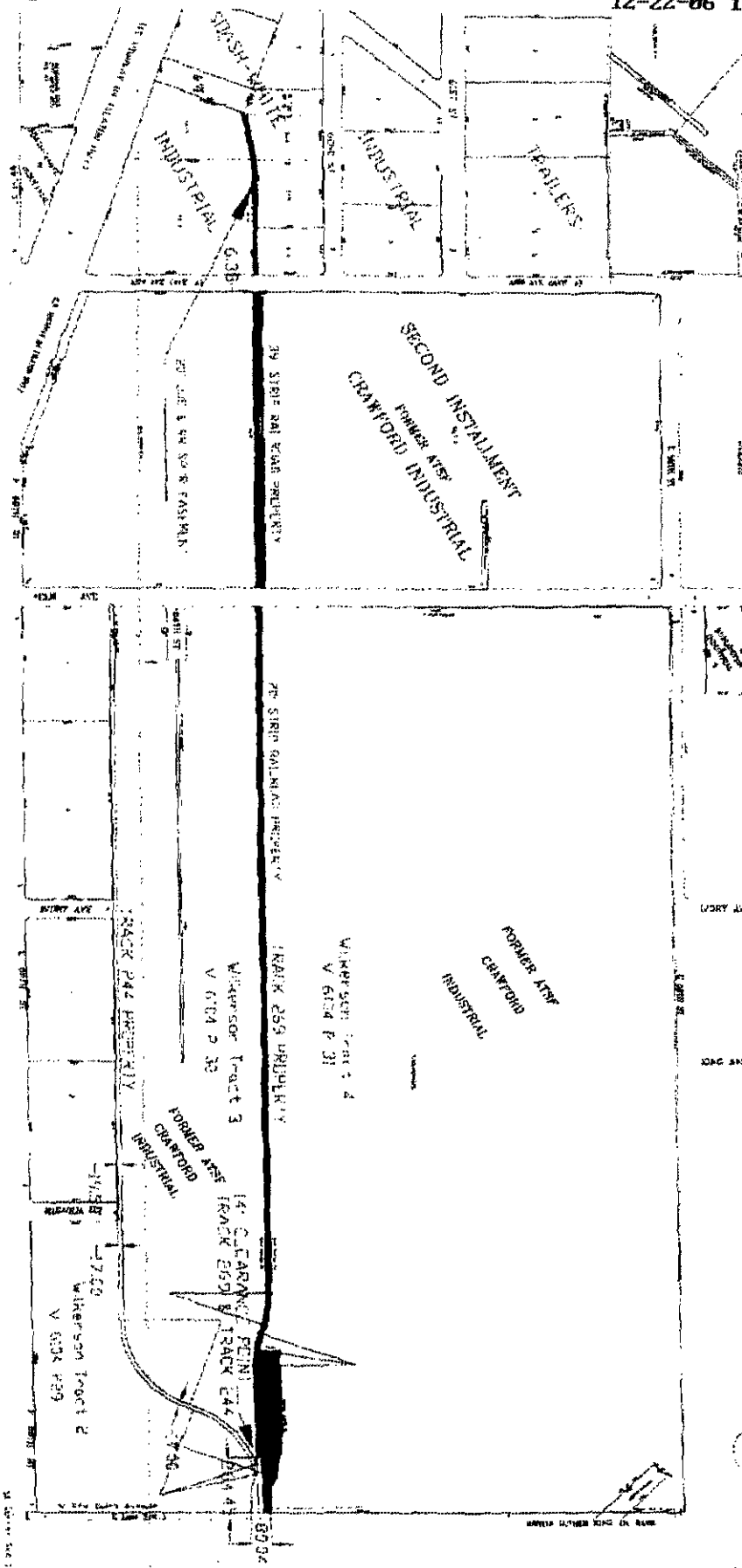
My Commission Expires: August, 05, 2006

EXHIBIT "A".

All of that portion of the South Plains Switching, Ltd., Co. (SAW) interest in the property, tracks, easements, and fixtures located with or attached to SAW Lead Track ICC Track No. at 269 Beginning West of its fourteen foot (14') clearance point with ICC Track No. at 244 (Beginning 264.45' West of the intersection of a projection of the Southern Property Line adjacent to ICC Track No. 269 to its intersection with the East Line of Section 1) to the end of track ICC No. 269. Being bordered by 58th Street on the North, 64th Street and ICC Track No. at 244 on the South, Ash Drive on the West and the West Right Of Way Line of Martin Luther King, Jr., Boulevard on the East, all as presently located within Section 1, Block E, GC&SF RR Survey, City of Lubbock, Lubbock County, Texas.

Being the same Track Numbers 269, 268, 282, 283, and 270 described in Deed Dated May 18, 1999 recorded in the Lubbock County, Texas Deed Records in Volume 6814 at Page 162.

COPY



SECTION 269
PROPERTY INVOLVED IN CRAWFORD INDUSTRIAL, INC
INCLUDING PERTINENT ADJACENT TO TRACK 244

Exhibit "A"

Drawing No. E3221

GRAPHIC SCALE
1" = 100'

COPY

Scale:
1" = 100'
1/8" = 25'
1/16" = 12.5'

1. EASE TRACK AT 100' N.E. 269

FORMER ATSF CRAWFORD INDUSTRIAL DISTRICT



South Plains Switching, Ltd., Company
P. O. Box 64295 -- Lubbock, TX 79464
Phone: 806-828-4841 -- Fax: 806-828-4863

Landmark Engineering, LLC
P.O. Box 4056 -- Amarillo, TX 79106
Phone: 806-434-4444

EXHIBIT B

Contract No. A1183228

RETURN TO

Secretary, The A.T. & S.F. RY. CO. Topeka

~~Santa Fe Original~~

11024634

LEASE OF LAND AND TRACKAGE
(Short Term)

THIS LEASE, made as of the 5th day of March, 1991, between THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter called "Lessor"), and WESTERN ROCK PRODUCTS, INC., a Delaware corporation (hereinafter, whether one party or more, called "Lessee").

WITNESSETH, That the parties hereto for the considerations hereinafter expressed covenant and agree as follows:

1. Lessor hereby leases to Lessee, subject to the rights and easements hereinafter excepted and reserved, and upon the terms and conditions hereinafter set forth, the land, together with those portions of tracks located thereon (hereinafter called "Premises"), situated at or near Lubbock, County of Lubbock, State of Texas, as described or shown on the sketch hereto attached, No. 16552, dated February 22, 1991, and made a part hereof, for a term beginning on March 6, 1991, and continuing on a month to month basis unless or until this Lease shall be terminated as hereinafter provided.
2. Lessor hereby excepts and reserves the right, to be exercised by Lessor and by any others who have obtained or may obtain permission or authority from Lessor so to do, (a) to operate, maintain, renew and relocate any and all existing pipe, power, and communication lines and appurtenances and other facilities of like character upon, over or under the surface of the Premises; and (b) from time to time to construct, operate, maintain, renew and relocate such additional facilities of the same character as will not unreasonably interfere with the use of the Premises by Lessee for the purpose specified in Section 4 hereof.
3. Lessee shall pay to Lessor for the use of the Premises the sum of Twelve Hundred and No/100 Dollars (\$1,200.00) per year. Said compensation shall be subject to revision at three (3) year intervals.
4. Lessee shall use the Premises exclusively as a site for transloading rock.

3114V

COPY

5. If ingress and egress to and from the Premises shall be required by use of Lessor's property adjacent to the Premises, such use is hereby granted, on a non-exclusive basis, by Lessor to Lessee. However, Lessor shall have the right, to be exercised at any time, to designate the location or route to be used for such purpose. For the purpose of this Lease, said ingress and egress route, whether specifically defined or not, shall be and is included under the definition of Premises.
6. (a) Lessee has examined the Premises and accepts the use and occupancy thereof with full knowledge of their condition, and shall observe and comply with any and all laws, ordinances or governmental regulations relating to the use and maintenance of the Premises.
- (b) Lessee covenants and warrants that Lessee either owns, or has obtained from the owner or owners thereof, the right to use any Improvements now on the Premises. Further, Lessee does hereby guarantee that upon termination of this Lease, for any reason whatsoever, Lessee will remove all of said improvements and/or personal property from the Premises and restore said Premises to a reasonably level and cleared condition, satisfactory to Lessor.
- (c) Lessee shall make no change or alteration in nor additions to Premises without first obtaining the written consent of Lessor.
- (d) Lessee shall pay any and all charges for water, gas, sewer, heat, light, power and telephone service and all other services supplied to or used on Premises or available, assessed or taxed to Premises. Lessee agrees that Lessor shall not be required to furnish to Lessee any water, gas, sewer, heat, light, power or telephone service or any other facilities, equipment, labor, materials or services of any kind whatsoever.
7. (a) Lessee shall pay, before the same become delinquent, all taxes, charges, rates, and assessments which may, during the term of this Lease, be levied upon, or assessed against, or be equitably chargeable to or assessed in respect of the Improvements; and where any such tax, rate, charge, or assessment may be embraced in the general amount of taxes charged upon the Premises separately or in connection with other property of Lessor, and Lessor shall pay all of said taxes, then Lessee shall promptly refund to Lessor the amount or part of the tax, charge, rate or assessment equitably or fairly apportionable to the Improvements.

100

- (b) In addition to the taxes specified above, Lessee shall pay to Lessor any privilege, sales, gross income or other tax (not including federal or state Income Tax) imposed upon the rentals received by Lessor by any agency having the authority so to do.
8. (a) Lessee agrees to keep the Premises and all Improvements thereon free from rubbish and in a neat and safe condition and satisfactory to Lessor. Lessee shall maintain, at Lessee's sole cost and expense, in good condition and repair, satisfactory to Lessor, all Improvements upon said Premises. The Premises and Improvements thereon shall not be used for displaying signs and notices other than those connected with the business of Lessee contemplated by this Lease. Such notices and signs shall be neat and properly maintained. Lessor shall have the right to enter the Premises at reasonable times to inspect the same.
- (b) Lessee shall not use or permit the use of the leased premises in any manner that will tend to create waste or a nuisance. In using the Premises, and in constructing, maintaining, operating and using the Improvements thereon, Lessee shall comply with any and all requirements imposed by federal or state statutes, or by ordinances, orders or regulations of any governmental body having jurisdiction thereover, including, but not limited to, building and zoning ordinances, restricting or regulating or prohibiting the occupancy, use or enjoyment of the Premises or regulating the character, dimensions or locations of any improvements on the Premises. Should any governmental body having jurisdiction in the matter require Lessor to dedicate, restrict or otherwise encumber any portion of the Premises, or any of its adjoining property, as a condition to approval of Lessee's use of the Premises, Lessor may, if said condition is unacceptable to Lessor, terminate this Lease. Lessee covenants to properly notify Lessor accordingly should any of the above occur.
9. (a) Lessee shall indemnify and hold harmless Lessor for any claim, loss, damage, expense or injury, including death, arising out of any act or omission of the Lessee, its employees or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other public body, individual, partnership, corporation, or other legal entity while on or about the Premises or while exercising any right or performing any obligation, pursuant to this Agreement, except to the extent that the claim, loss, damage, expense, death, or injury is due to the sole negligence of Lessor, its officers, agents, or employees.
- (b) Lessee shall indemnify and hold harmless Lessor from any liability or claimed liability arising under the Federal Employees Liability Act (F.E.L.A.) for any incident on or about the Premises regardless of negligence or alleged negligence of Lessor and regardless of any claim or allegation that Lessor was negligent in failing to provide its employees with a safe place to work.

10. (a) In further consideration of the rental to be paid by Lessee to Lessor herein contained, Lessor agrees that Lessee may during the life of this Lease receive service upon those portions of tracks located on the Premises, shown on the Exhibit "A" print attached hereto, it being understood and agreed that Lessor shall have the full right to use said tracks for other than the purposes of serving Lessee, provided such other use does not unreasonably interfere with use of the track for the purpose specified in Section 4.
- (b) Lessee shall at all times, and at its sole expense (or an equitable share in case other industries shall be served over the tracks), maintain, or cause to be maintained, those portions of tracks located on the Premises, in such safe and satisfactory condition as necessary to conform with Lessor's Standards and specifications, and to conform with all applicable Standards promulgated by the Federal Railway Administration, Occupational Safety and Health Administration or any successor agency or agencies, and all other governmental bodies having jurisdiction. Lessee shall indemnify and save harmless Lessor from and against any and all liability for losses and damages resulting from the failure of Lessee properly to maintain those portions of tracks located on the Premises, or failure to conform with Standards promulgated by governmental agencies respecting the condition and maintenance of those portions of tracks located on the Premises. If Lessor should determine that said tracks are unsafe, it may refuse to operate thereover until made safe by Lessee.
- (c) The title to those portions of tracks located on the Premises, and to all property furnished in the maintenance thereof, shall be in Lessor.
- (d) Lessee shall make no realignment, alteration or relocation of those tracks located on the Premises without first obtaining the written consent of Lessor.
11. (a) Lessee shall strictly comply with any and all statutes, ordinances, rules, orders and judgments of all governmental bodies having jurisdiction in the State in which the tracks under Lease are located, governing side clearances and overhead clearances from railroad tracks in that State.
- (b) In the event Lessee desires to install any gates across and adjacent to the tracks, or to install a track scale, unloading pit, loading or unloading device, adjustable loading docks or doors at warehouses, or any other structure which will impair the required clearances along the tracks, Lessee shall first secure any and all required authority from the State or other governmental body or agency having jurisdiction, prescribed by statute or Order of competent public authority, and shall furnish Lessor with a copy of such Order approving installation of the facility which will impair required clearances. Lessee shall submit to Lessor the plans and specifications for such facilities, and shall secure Lessor's written approval thereof before construction of such facilities is undertaken.

- (c) Lessee shall install, use and maintain all facilities described in subsection (b) of this Section 11, at its sole cost and expense, in such a manner and of such materials, satisfactory to Lessor, and as will not at any time be a source of danger to or interference with the safe operations by Lessor on the tracks and on its railroad. Gates across the tracks shall be opened whenever necessary to enable Lessor to operate over the tracks. Unloading pits shall be securely covered when not in actual use and at all times when the tracks are being switched. Doors shall be firmly secured, and adjustable loading docks at warehouses shall likewise be securely fastened in an upright position when not in actual use and at all times when the tracks are being switched. During installation and when using and repairing these facilities, Lessee shall exercise utmost and extraordinary diligence to prevent damage to property of Lessor or injury to its agents or employees.
- (d) Vertical and horizontal clearances from the tracks at entrances to buildings, and such clearances from the tracks for the facilities referred to in subsection (b) of this Section, shall conform with those specified in the Order authorizing such reduced clearances along the tracks.
- (e) Notwithstanding any provision of Section 9 of this Lease, Lessee shall indemnify and save harmless Lessor from any and all claims, loss, damage or expense for loss of or damage to property, including without limitation, the facilities described in subsection (b) of this Section 11, and injury to or death of persons, including without limitation, employees and agents of Lessor, arising out of the breach or alleged breach by Lessee of the obligations of this Section 11 or resulting in any manner from the construction, installation, maintenance, use, state of repair, presence or removal of such facilities along, under, across and adjacent to the tracks, regardless of whether such loss, damage, injury or death be caused or contributed to by the negligence or alleged negligence of Lessor, its agents, or employees, or otherwise. Lessee shall promptly upon receipt of bill pay to Lessor the full amount of any loss or damage that Lessor may sustain, incur or become liable for, and all sums which Lessor may pay or be compelled to pay in settlement of any claims on account thereof. Lessee shall also reimburse Santa Fe for any money which Santa Fe has paid as a result of a violation or alleged violation by Lessee of any statute, ordinance, rule, order or judgment referred to in this Section 11.
12. Lessee shall comply with all statutes, ordinances, rules, regulations, orders and decisions (hereinafter referred to as "Standards"), issued by any federal, state, or local governmental body or agency established thereby (hereinafter referred to as "Authority") relating to Lessee's use of the Premises. In its use of the Premises Lessee shall at all times be in full compliance with all Standards present or future set by any Authority, including but not limited to Standards concerning air quality, water quality, noise, hazardous substances and hazardous waste. In the event Lessee fails to be in full compliance with Standards set by any Authority, Santa Fe may after giving reasonable notice of the failure to

Lessee, and Lessee, within 30 days after such notice fails either to correct such noncompliance or to give written notice to Lessor of its intent to contest the allegation of noncompliance before the Authority establishing the Standard or in any other proper form, take whatever action is necessary to bring the Premises into compliance. Lessee shall reimburse the Lessor for all costs (including but not limited to consulting, engineering, clean up and disposal costs and legal costs) incurred by Lessor in complying with such Standards, and also such costs incurred by Lessor in abating a violation of such Standards, protecting against a threatened violation of such standards, defending any claim of violation of such standards in any proceeding before any Authority or court, and paying any fines or penalties imposed for such violations.

- (a) In case of a breach of the obligations contained in this Section 12 relating to "hazardous waste" and "hazardous substance", regardless of the negligence or alleged negligence of Lessor, Lessee agrees to assume liability for and to save and hold harmless Lessor from and against all claims for injuries to any person or damage to property including without limitation, employees and property of the Lessor and Lessee, and all related expenses including without limitation attorney's fees, investigator's fees, litigation expense, resulting in whole or in part from Lessee's failure to comply with any Standard issued by any governmental authority concerning "hazardous substances" and/or "hazardous waste". Lessee at its cost shall assume the defense of all claims, suits or actions brought for damages, and fines or penalties hereunder, regardless of whether they are asserted against Lessor or Lessee. Lessee also agrees to reimburse Lessor for all costs of any kind incurred as a result of Lessee's failure to comply with this Section 12, including but not limited to fines, penalties, clean up and disposal costs, and legal costs incurred as a result of Lessee's generating, handling, transporting, treating, storing for a period more than 30 days, or disposing of "hazardous waste" or "hazardous substances" on the Premises.
- (b) In case of a breach of Standards concerning air quality, water quality or noise, Lessee shall assume liability for and save and hold harmless the Lessor from any claim of a violation of such Standards regardless of the nature thereof or the Authority or person asserting such claim which results from the Lessee's use of the Premises, unless the claim results from the sole negligence of the Lessor. Lessee at its cost shall assume the defense of all such claims regardless of whether they are asserted against the Lessor or Lessee.

It is understood and agreed that a Lessee which does not now or in the future, generate, handle, transport, treat for more than 30 days, or dispose of "hazardous waste" or "hazardous substances" within the meaning of this Section 12 is not subject to the provisions of this Section 12 hereof. It is further understood that the Lessee is not responsible for clean up costs of any "hazardous waste" and/or "hazardous substances" or contamination resulting therefrom which occurred prior to Lessee's occupancy or use of the Premises.

13. It is the intention of the parties that Lessor's right to indemnity contained in Sections 9(b), 11(e) and 12(a) shall be valid and enforceable against Lessee regardless of negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Lessor, its officers, agents and employees.
14. Upon written notice from Santa Fe, Lessee agrees to assume the defense of any lawsuit, administrative action or other proceeding brought against Lessor by any public body, individual, partnership, corporation, or other legal entity, relating to any matter covered by this Agreement for which Lessee has an obligation to assume liability for and/or save and hold harmless Lessor. Lessee shall pay all the costs incident to such defense including, but not limited to, attorneys' fees, investigators' fees, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments. Any and all lawsuits or administrative actions brought or threatened on any theory of relief available at law, in equity or under the rules of any administrative agency shall be covered by this Section 14 including, but not limited to, the theories of intentional misconduct, negligence, breach of statute or ordinance, or upon any theory created by any statute or ordinance, state or federal.
15. If any rental hereunder shall be due and unpaid, or if default shall be made in any of the covenants or agreements of Lessee herein contained, or in case of any assignment or transfer of this Lease by operation of law, Lessor may, at its option, terminate this Lease by serving five (5) days' notice in writing upon Lessee; but any waiver by Lessor of any default or defaults shall not constitute a waiver of the right to terminate this Lease for any subsequent default or defaults.
16. (a) This Lease may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party, and upon expiration of the time specified in such notice, this Lease and all rights of Lessee hereunder shall absolutely cease and determine. However, upon any such termination, Lessor shall retain a minimum charge for use of the Premises a sum equal to three (3) months rental and any excess unearned portion of the annual rental paid in advance shall be refunded to Lessee.

(b) Lessee acknowledges that Lessor utilizes the rental collection system involving direct deposit of monies received through financial institution selected by Lessor, which precludes Lessor's ability to exercise rejection of a rental payment before Lessee's check is cashed. Lessee agrees that as a condition of Lessor granting this Lease, Lessee hereby waives any right it may have under law to force continuation of this Lease due to Lessor having accepted and cashed Lessee's rental remittance. Lessor shall have the option of rejecting Lessee's payment by refunding to Lessee the rental amount paid by Lessee, and enforcing the termination provisions contained herein.

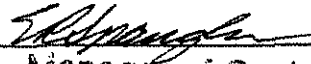
COPY

17. Any notice to be given by Lessor to Lessee herein, and any notice to be given by Lessee to Lessor herein, shall be deemed to be properly served if it be deposited with the United States Postal Service, or its successor, or other universally acceptable mailing service, postage prepaid, addressed to the other party or parties hereto, at the addresses shown beneath signature of the respective parties hereto, or to such other address as the parties hereto may from time to time designate.
18. Upon the termination of this Lease in any manner herein provided, Lessee shall forthwith surrender to Lessor the possession of the Premises and shall remove the Improvements and all personal property, and restore the Premises to substantially the state in which they were prior to the construction of the Improvements, and in case Lessee shall fail within thirty (30) days' after the date of such termination to make such removal or restoration, then Lessor may, at its election to be exercised within one hundred twenty (120) days' thereafter, either remove the Improvements and all or any part of any personal property and restore the Premises for the account of Lessee, and in such event Lessee shall, within thirty (30) days' after the rendition of bill therefor, reimburse Lessor for the cost so incurred, or may take and hold the Improvements and all or any part of any personal property as its sole property.
19. If Lessee fails to surrender to Lessor the Premises, upon any termination of this Lease, all the liabilities and obligations of Lessee hereunder shall continue in effect until the Premises are surrendered; and no termination hereof shall release Lessee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or the date, if later, when the Improvements are removed and the Premises restored or Lessor elects to take and hold the Improvements as its sole property as referred to in previous Section.
20. In the event that Lessee consists of two or more parties, all the covenants and agreements of Lessee herein contained shall be the joint and several covenants and agreements of such parties.
21. Neither Lessee, nor the heirs, legal representatives, successors or assigns of Lessee, nor any subsequent assignee, shall underlease or sublet the Premises or the Improvements, or any part thereof, nor assign or transfer this lease or any interest herein, without the written consent and approval in each instance of Lessor.
22. All the covenants and agreements of Lessee herein contained shall be binding upon the heirs, legal representatives, successors and assigns of Lessee, and shall inure to the benefit of the successors and assigns of Lessor.

IN WITNESS WHEREOF, this Lease has been duly executed, in duplicate, by the parties hereto as of the day and year first above written.


THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

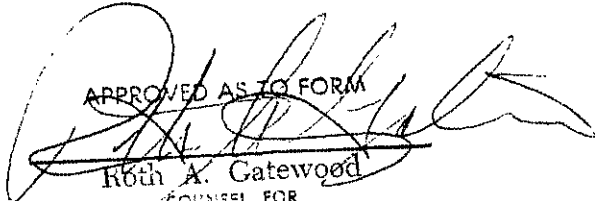
One Santa Fe Plaza
920 Southeast Quincy Street
Topeka, Kansas 66612

By 
Title Manager of Contracts
(Lessor)

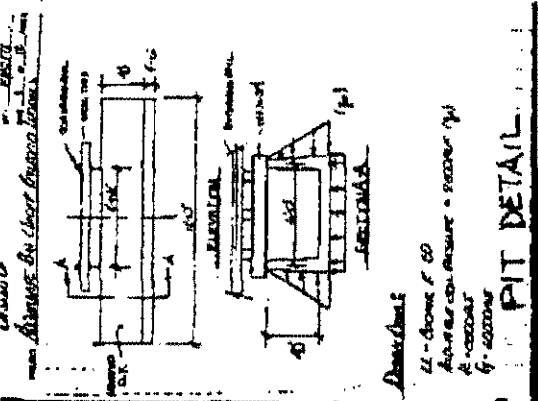
WESTERN ROCK PRODUCTS, INC.

P. O. Box 27019
Albuquerque, New Mexico 87125

By 
Title VICE PRESIDENT
(Lessee)

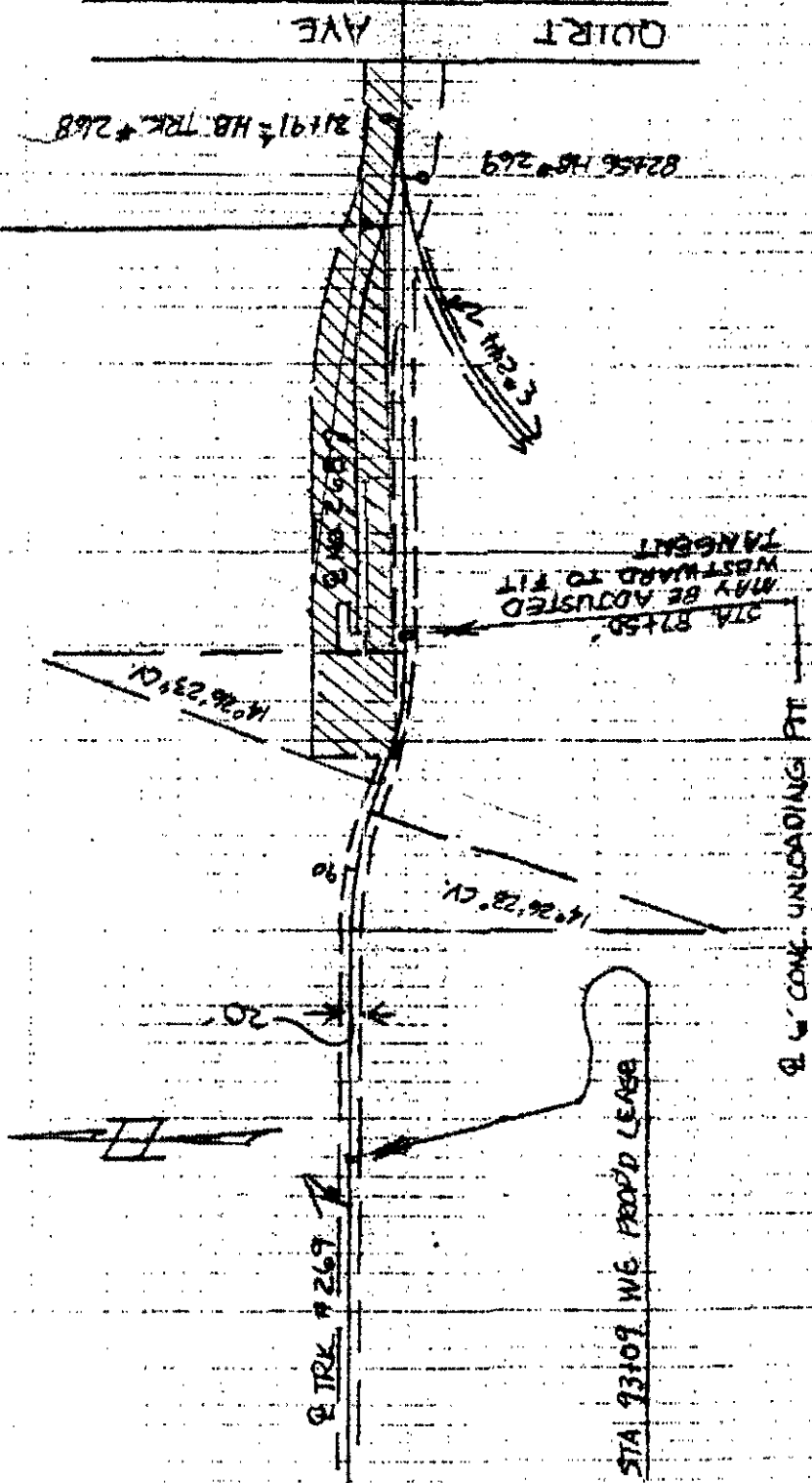

APPROVED AS TO FORM
Keith A. Gatewood
COUNSEL FOR
AT & SF RY. CO.

COPI



PIT DETAIL

STA. 83109 E.E. PROP'D LEASE



SKETCH
SHOWING
PROP'D LEASE FOR
WESTERN ROCK
AT
LUBBOCK, TEXAS
LUBBOCK SUB + CENTRAL REGION
FILE# 1015718 TRACINGS # 16552

February 22, 1991

DESCRIPTION:
PROP'D TEMPORARY TRK # 269, LEASE FOR
THE UNLOADING OF AGGREGATE. THIS WILL
NECESSITATE THE PLACEMENT OF A CONCRETE
UNLOADING PIT
TRK #269 ~ 1000' TRK. LEASE AND 20,000
SQ. FT. OF ASSOCIATED LAND. (20'x1000')

STA 93109 WE PROP'D LEASE

EXHIBIT C

South Plains Switching, Ltd. Co.
South Plains Lamesa Railroad, Ltd.
P. O. BOX 676 **SLATON, TEXAS 79364**
PHO: (806)828-4841 **FAX: (806)828-4863**

January 12, 2004

COPY

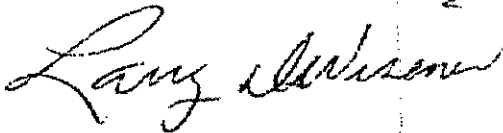
Mr. Bill Winters
VP/GM Northern Sales
Hanson Aggregates, Southwest Region
8505 Freeport Parkway N., Suite 600
Irving, Texas 75063

Dear Mr. Winters:

As per our telephone conversation of 01/12/04, South Plains Switching, Ltd. Co. (SAW) will suspend annual payments for lease of track # 382, Lease Agreement #183228 effective January 01, 2004.

The remainder of Lease Agreement # 183228 including the maintenance agreement will remain in affect. If the enclosed Agreement pertaining to demurrage relief meets with your approval, please sign, date and return it to me for my signature. I will send you a copy of the completed Agreement.

Sincerely,



Larry D. Wisener
President

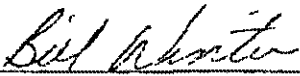
South Plains Switching, Ltd. Co.
South Plains Lamesa Railroad, Ltd.
P. O. BOX 676 SLATON, TEXAS 79364
PHO: (806)828-4841 FAX: (806)828-4863

AGREEMENT

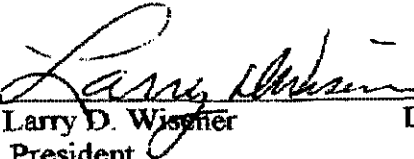
Effective January 01, 2004, South Plains Switching, Ltd. Co., (SAW) will afford Hanson Aggregates all of the per diem relief provided to SAW by Burlington Northern Santa Fe (BNSF) on rail cars going to track # 382.

Any accrued charges over 120 hours will be the responsibility of Hanson Aggregates.

This Agreement is to be held confidential.


Bill Winters
VP/GM Northern Sales
Hanson Aggregates
Southwest Region

1-16-04
Date


Larry D. Wisner
President
South Plains Switching, Ltd. Co.

1-22-04
Date

EXHIBIT D

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

December 27, 2006

*By certified mail,
(return receipt requested)*

By UPS overnight mail

Michael H. Hyer, Esq.
Vice President & General Counsel
Hanson North America
P.O. Box 660225
Dallas, TX 75266

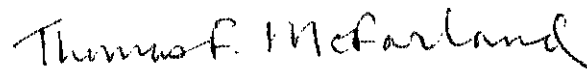
Michael H. Hyer, Esq.
Vice President & General Counsel
Hanson North America
300 E. John Carpenter Freeway, #1645
Irving, TX 75062

Re: Lease Contract No. 183228

Dear Mr. Hyer:

Pursuant to Paragraph 16(a) of the above Lease Contract, this is to provide notice in behalf of Choo Choo Properties, Inc. (Choo Choo) to Hanson Aggregates WRP (Hanson), c/o Hanson North America, of cancellation of that Lease Contract as of 30 days after the date of this letter, i.e., as of January 26, 2007. Choo Choo acquired the property leased by Hanson by deed from South Plains Switching, Ltd. Co. (SAW) executed on April 28, 2006.

Very truly yours,



Thomas F. McFarland
*Attorney for Choo Choo
Properties, Inc.*

TMcf:kl:wp8.0\1169-A\lrMHHI

cc: Mr. Vernon A. Williams
Mr. Larry Wisener
Mr. Dennis Olmstead

EXHIBIT E

South Plains Switching, Ltd. Co.
P. O. BOX 64299 LUBBOCK, TEXAS 79464
PHO: (806)828-4841 FAX: (806)828-4863

December 26, 2006

Mr. Melvin Clemens
Surface Transportation Board
1925 K Street, N.W.
Washington, D. C. 20423-0001

RE: Telephone conversation of December 19, 2006 between Delilah Wisener and Melvin Clemens

Dear Mr. Clemens:

At your suggestion, I am writing to request the return of track 9200 to SAW for use of aggregate transloading. This track has historically been used for the unloading of aggregates. As discussed in our telephone conversation, PYCO Industries is now using all 3600+ feet of this track solely for empty tank car storage purposes.

The recent filing by Hanson Aggregates dated December 21, 2006 was the reason for my phone call of the 19th. Although I have not personally been contacted by anyone from Hanson, my call to you was an effort to use track 9200, to handle Hanson's shipments. In our conversation, you stated that ... "it was never the intent of the STB to impair or harm rail service to SAW's remaining customers", but this was not evidenced by the Board's decision to make available to WTLC and PYCO over 50% of SAW Yard Storage Tracks and protocol operating hours of 20 out of 24 hours per day. Now for the second week in a row SAW has not had an interchange from WTLC on Thursday, Friday, Saturday, Sunday or Monday. It appears that if PYCO does not need service, SAW does not get service. Where is the WTLC common carrier obligation?

In April 2006, and prior to the STB ruling of August 2, 2006 pertaining to transfers of property after May 5, 2006, SAW conveyed title to the property formerly utilized by Hanson Aggregates on a month to month basis. SAW retained the right to use the property through December 2006. There have been no shipments by Hanson Aggregates to SAW from mid-June 2006 through December 2006 and as referenced by their own letter to this Board (see attachment). SAW had no reason to expect any future shipments from Hanson.

As the owner of SAW I still have not had contact with any Hanson Representatives concerning any shipments to SAW. My only contact has been a letter from Hanson attorney threatening legal action (copy attached). My husband informed me that he had received two cell phone calls from Hanson people stating Hanson's desire to return to the Lubbock market on a limited basis and they wanted to know if SAW would accommodate them. Mr. Wisener stated explicitly that Hanson Aggregates should contact me. Hearing of those conversations prompted my call to you.

Also, I am enclosing copies of statements sent to PYCO Industries and WTLC by me. SAW is requesting the assistance of this Board under the statutes (49 USC 11123 Paragraph B, 2) to receive just and due compensation from WTLC for the use of SAW infrastructure during the period of alternative rail service.

SAW would like to make the Board aware of a similar arrangement with the BNSF at Burris, Texas whereby SAW is compensated in the amount of \$75.00 per loaded revenue car. In this instance, BNSF utilizes far less trackage and time than the WTLC has been granted for the use of SAW infrastructure. I feel this \$75.00 per car is minimal compensation to be paid SAW by the WTLC.

With respect to PYCO surcharges due me, I realize the Board may not have the authority to instruct PYCO Industries to render payment for surcharges and constructive placements as covered by the SAW Tariff. The Board in its rulings (although requested by PYCO) did not relieve PYCO of obligations under the tariff. This may be a District Court matter.

SAW is of the opinion that this Board is prejudiced and discriminatory and is being used by those involved in a conspiracy effort to remove SAW from Lubbock, Texas. I feel the Alternative Rail Service and the Feeder Line Application statutes have been erroneously applied against my business.

I remain,

A handwritten signature in cursive script, reading "Delilah Wisener".

Delilah Wisener
Owner

attachments



December 21, 2006

Hanson North America

Michael H. Hyer
Vice President
& General Counsel

P.O. Box 660225, Dallas, TX 75266
300 E. John Carpenter Freeway, Suite 1645
Irving, TX 75062
Tel 972 653 6141
Fax 972 653 6213
michael.hyer@hanson.biz

VIA FACSIMILE (806) 828-4863

Delilah Wisener
South Plains Switching Ltd. Co.
P.O. Box 64299
Lubbock, Texas 79464-4299

Re: Contract No. 183228

Dear Mrs. Wisener:

This is in regards to your letter dated December 5, 2006 to Mr. Jon Reedy of Hanson Aggregates which, as we understand it, purports to constitute a notice of cancellation of the Lease of Land and Trackage, dated March 5, 1991, between South Plains Switching Ltd., Co. ("SAW") (as the successor to the rights and interests of The Atchison, Topeka and Santa Fe Railway Company) and Hanson Aggregates WRP (as the successor to the rights and interests of Western Rock Products, Inc.) and identified as Contract No. 183228 (the "Track Lease").

This Track Lease is subject to the decision and order of the Surface Transportation Board, dated August 2, 2006 (STB Finance Docket No. 34890, et al.) (the "STB Order"). Paragraph 4 of the STB Order provides in pertinent part that "SAW may not transfer any property interests in, or rescind any leases or agreements concerning . . . any shipper that supports a feeder line application" Hanson has supported a feeder line application in those proceedings and is entitled to the protection and benefit of the STB Order. Accordingly, SAW may not rescind the Track Lease, as your December 5, 2006 letter purports to do, and your attempt to cancel that lease is illegal and void. It is Hanson's position that the Track Lease continues in full force and effect.

Prior to receipt of your letter, Hanson had submitted a bid to supply construction aggregates to a project in Lubbock, Texas. But for concerns raised by SAW's actions, we understand that customer is prepared to accept the bid and purchase our aggregates for the project, with shipments commencing in mid January 2007.

That bid, of course, was made in reliance on Hanson's rights and SAW's obligations under the Track Lease, the STB Order and the transportation laws of the United States. However, in recent telephone conversations with Hanson representatives, your husband stated that SAW will not allow use of trackage subject to the Track Lease or provide service as to allow Hanson to deliver the materials to that location. Such action by SAW would violate the STB Order as well as SAW's obligations under the Track Lease. Hanson requests that SAW

immediately confirm to Hanson your intention to provide these services. SAW will be liable to Hanson for any losses or additional costs Hanson may incur due to SAW's failure to provide such services, including those related to this pending bid.

In addition, your husband has reported to Hanson representatives that SAW has sold or intends to sell or transfer its interest in the trackage subject to the Track Lease to another party. Such transfer is also prohibited by the STB Order and any purported transfer would be void. Again Hanson requests that you confirm that SAW continues to own those assets, as required by the STB Order.

Yours very truly,



Michael H. Hyer

cc: Jon Reedy
Stan Dacus

Montange

From: "Hyer, Michael (Irving) NA" <Michael.Hyer@hanson.biz>
To: <c.montange@verizon.net>
Cc: "Dacus, Stan (Irving) NA" <Stan.Dacus@hanson.biz>
Sent: Monday, June 12, 2006 11:23 AM
Subject: PYCO Industries - Feeder Line Application, STB 3484

Mr. Montange,

This confirms our conversation that you are authorized to state in the above referenced Surface Transportation Board proceeding that Hanson Aggregates, Inc. ships constructions aggregates into Lubbock using South Plains Switching LLC rail service and believes that service is inadequate.

Please let me know if you have any questions in this regard.

Mike

Michael H. Hyer
Vice President and General Counsel
Hanson Building Materials America, Inc.
8505 Freeport Parkway, Suite 138
Irving, Texas 75063
Tel (469) 417-1300
Fax (469) 417-1487
michael.hyer@hansonamerica.com

This message and any attached documents contain information from the General Counsel of Hanson Building Materials America, Inc. that may be confidential and/or privileged. If you received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message. Thank you.

6/13/2006

South Plains Switching, Ltd. Co.
P. O. BOX 64299 LUBBOCK, TEXAS 79464
PHO: (806)828-4841 FAX: (806)828-4863

December 18, 2006

PYCO Industries, Inc.
Mr. Gail Kring
P. O. Box 841
Lubbock, TX 79408
Via Certified/Confirmation Requested

RE: Request for Payment of Surcharge and Constructive Placement of PYCO traffic on SAW Infrastructure.

Dear Mr. Kring:

SAW Tariff, Section VI. has a provision for surcharge (PYCO is being charged \$20.00) per loaded car and Section I. d. provides for a charge of \$150.00 for constructively placed cars.

There are no decisions made by the STB that rescind the SAW Tariff.

With this in mind please remit to SAW \$20.00 per loaded car handled under PYCO Industries Alternative Rail Service STB Docket FD 34889 0 and \$150.00 per car for all constructively placed cars. Your payment should include documentation showing car number and date handled commencing January 26, 2006 and ending 12 AM on the date the STB rescinds the order.

Your prompt attention is appreciated.

Sincerely,

COPY

Delilah Wisener
Owner

South Plains Switching, Ltd. Co.
P. O. BOX 64299 **LUBBOCK, TEXAS 79464**
PHO: (806)828-4841 **FAX: (806)828-4863**

December 18, 2006

West Texas and Lubbock Railroad
Mr. Ed Ellis
P. O. Box 618181
Chicago, IL 60661
Via Certified/Confirmation requested

RE: Request for Payment for use of SAW Infrastructure for handling of PYCO Traffic.

Dear Mr. Ellis:

We have had an exchange of correspondence on payment by WTLC to SAW for use of SAW infrastructure by WTLC. You are aware no agreement was reached on the amount due SAW.

SAW and BNSF have an agreement for payment to SAW by BNSF for \$75.00 per loaded car as fair compensation to SAW when BNSF uses SAW facilities. That agreement is for only a short piece of SAW track; far less than that used on a daily basis by WTLC.

With this in mind please remit to SAW \$75.00 per loaded car for all cars handled under PYCO Industries Alternative Rail Service, STB docket number FD 34889 0. Your payment should include documentation showing car number and date handled commencing January 26, 2006 and ending 12 AM on the date the STB rescinds the order.

Your prompt attention is appreciated.

Sincerely,

COPY


Delilah Wisener
Owner

CC: PYCO
STB

VERIFICATION

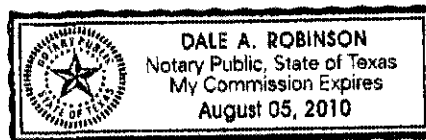
STATE OF TEXAS)
) SS:
COUNTY OF LUBBOCK)

DELILAH WISENER, being duly sworn on oath, deposes and states that she has read the foregoing statement, that she knows the contents thereof, and that the facts therein stated are true and correct.


DELILAH WISENER

SUBSCRIBED AND SWORN to
Before me this 28th day
of December, 2006.

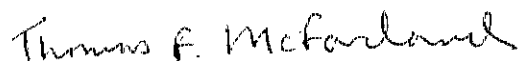

Notary Public



My Commission Expires: *August 05, 2010*

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2007, I served the foregoing document, Motion To Dismiss Petition For Alternative Rail Service and Reply In Opposition If Petition Is Not Dismissed, on Michael H. Hyer, Esq., Vice President-General Counsel, Hanson North America, 300 E. John Carpenter Freeway, Irving, TX 75062, by UPS overnight mail, Monday delivery.



Thomas F. McFarland